

STATE OF MAINE

CHILDREN'S RESIDENTIAL CARE FACILITIES
LICENSING RULE

10-144 CODE OF MAINE RULES
Chapter 36



Department of Health and Human Services
Maine Center for Disease Control and Prevention
11 State House Station
Augusta, Maine 04333-0011

Effective date:

TABLE OF CONTENTS

| | |
|--|-----------|
| SECTION 1. PURPOSE AND SCOPE..... | 1 |
| SECTION 2. DEFINITIONS | 1 |
| SECTION 3. PROGRAM ADMINISTRATION..... | 6 |
| A. Governing authority..... | 6 |
| B. Organizational chart..... | 8 |
| C. Program administrator | 8 |
| D. Annual program evaluation | 9 |
| E. Financial | 9 |
| SECTION 4. LICENSE APPLICATION REQUIRMENTS..... | 10 |
| A. Department review of application | 10 |
| SECTION 5. CORE LICENSING REQUIREMENTS..... | 13 |
| A. Service types | 13 |
| B. License types | 13 |
| C. Qualified staff..... | 15 |
| D. Inspections | 15 |
| E. Policies required by facility | 16 |
| F. Records required by facility..... | 21 |
| G. Reporting requirements | 24 |
| H. Rights of residents | 26 |
| I. Admissions | 28 |
| J. Comprehensive assessment | 31 |
| K. Service plans..... | 32 |
| L. Discharge requirements | 34 |
| M. Healthcare | 35 |
| N. Medication administration and storage..... | 37 |
| O. Behavior management | 43 |
| P. Physical plant..... | 44 |
| SECTION 6. PERSONNEL QUALIFICATIONS AND TRAINING..... | 51 |
| A. Qualifications..... | 51 |
| B. Background checks..... | 53 |
| C. Personnel training | 54 |
| D. Distant site practitioners | 55 |
| E. Independent contractors..... | 56 |
| SECTION 7. DAILY OPERATIONS | 58 |
| A. Supervision of resident | 58 |
| B. Group living arrangements | 58 |
| C. Resident's money..... | 58 |
| D. Clothing | 59 |
| E. Religion | 59 |
| F. Authorized absences | 59 |
| G. Unauthorized absences | 60 |
| H. Food service and safety | 60 |

| | | |
|-------------------|--|-----------|
| I. | Transportation..... | 61 |
| J. | Emergency preparedness | 61 |
| SECTION 8. | SPECIALIZED PROGRAMS | 64 |
| A. | Mental health treatment program..... | 64 |
| B. | Substance abuse treatment program | 66 |
| C. | Education program..... | 68 |
| D. | Children’s residential care facility with secure capacity (Level 1)..... | 68 |
| E. | Children’s residential care facility with secure capacity and psychiatric treatment (Level 2) | 70 |
| SECTION 9. | COMPLIANCE AND ENFORCEMENT..... | 81 |
| A. | Statement of deficiencies | 81 |
| B. | Plan of correction..... | 81 |
| C. | Order of correction | 81 |
| D. | Conditional license | 82 |
| E. | Amendment or modification of a license..... | 82 |
| F. | Refusal to issue or renew a license | 82 |
| G. | Revocation or suspension of a license | 82 |
| H. | Appeals | 83 |
| | STATUTORY AUTHORITY AND HISTORY | 84 |

SECTION 1. PURPOSE AND SCOPE

This rule and its enabling statutes govern all Children's Residential Care Facilities in the State of Maine. To avoid redundancy and to streamline the rule, the statutory requirements may not be repeated in this rule. Program participants must understand and comply with the statutes governing the oversight of children's residential care facilities.

SECTION 2. DEFINITIONS

- A. Definitions in this rule are in addition to definitions in applicable statutes. The definitions in the statutes may not be repeated in this rule.
1. **Administrator** means an individual at least 21 years of age, who has at least a Bachelor's Degree from an accredited school and two years of experience in the management and supervision of personnel and children's residential care facilities or comparable training or experience. The administrator is charged with responsibility for the general administration of a program, agency or facility. Every individually licensed facility must have an identified administrator.
 2. **Advisory board** means a group created and charged by the organization's governing body to review the organization's operations or practices and submit recommendations for quality improvement. Individuals with a proprietary interest in the facility or service or with actual managerial or administrative authority may not serve on an advisory board.
 3. **Alcohol and drug counselor** means a certified or licensed alcohol and drug counselor as defined by 32 M.R.S. § 6203-A (3).
 4. **Bedroom** means a distinct space used as a sleeping area for residents. A dormitory-style bedroom may be broken into several bedroom spaces using partitions. Closets, alcoves and corridors or any other room which is normally used for other than sleeping is not considered to be a bedroom.
 5. **Behavior management** means those principles and methods employed by a children's residential care facility to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner. This is done in accordance with written policies and procedures governing program expectations, treatment goals, resident and staff safety, security, and the resident's service plan.
 6. **Board of directors** means an association of persons with ultimate administrative and managerial control and empowered to serve as the governing body of a facility. This board normally discharges its responsibilities by employing a chief executive officer and formulating policies for the facility's operations.
 7. **Chemical restraint** means the use of psychotropic agents as a form of restraint.
 8. **Child** means a person who is less than 18 years of age and is not a legally emancipated minor.

9. **Children's residential care facility** means any licensed children's home as defined in 22 M.R.S. § 8101 (1), which provides board and care for one or more residents on a regular, 24 hours per day residential basis and, as further defined in 22 M.R.S. § 8101 (4). A children's residential care facility does not mean family foster home. For the purposes of this rule, the term facility means a children's residential care facility. A children's residential care facility may be licensed for more than one residence.
10. **Clinician** means an individual appropriately licensed to provide medical, mental health, or substance abuse services by the State of Maine.
11. **Complaint investigation** means the Department's review of a children's residential care facility's records and Department-conducted interviews of residents, employees and collateral contacts to investigate a complaint against the facility regarding compliance with this rule.
12. **Comprehensive assessment** means an integrated evaluation of a resident's medical and psychosocial needs, including co-occurring mental health and substance abuse needs to determine the need for treatment or referral, and to establish the appropriate intensity and level of care. Assessment results form the basis for the resident's service plan.
13. **Crisis services** means immediate intervention services available 24-hours a day for the treatment and stabilization of acute emotional disturbances, to ensure the safety of a resident or others.
14. **Critical incident** means an occurrence that affects the health or safety of the resident or others, or a breach of a resident's rights that results, or could result, in a harmful or undesirable outcome. Critical incidents can also include: fires or structural damage, a resident's death, attempted suicide, serious illness, incident involving serious bodily injury to the resident or a severe psychiatric episode involving the resident.
15. **Department or DHHS** means the Maine Department of Health and Human Services, Maine Center for Disease Control and Prevention.
16. **Direct access** means access to the property, personally identifiable information, financial information or resources of a resident or physical access to a resident served by the facility.
17. **Direct care worker** means an individual who by virtue of employment generally provides to residents direct contact assistance with personal care or activities of daily living or has direct access to provide care and services to residents regardless of setting. Direct care worker does not include a certified nursing assistant employed in that person's capacity as a certified nursing assistant.
18. **Direct resident contact** means an encounter with a resident whether face-to-face, by telephone or through electronic communication.
19. **Direct service** means the provision, coordination or management of preventive, diagnostic, therapeutic, rehabilitative or supportive service that relates to the physical, mental health or functional status of a resident.

20. **Education program** means a children's residential care facility that is licensed to directly provide an education program in accordance with Section 8(C) of this rule.
21. **Emergency safety intervention** means the use of restraint or seclusion as an immediate response to an emergency safety situation.
22. **Emergency safety situation** means an unanticipated resident behavior that places the resident or others at serious risk of harm if no intervention occurs and that calls for an emergency safety intervention.
23. **Governing body or governing authority** means an individual or association of persons (board of directors) with ultimate managerial control and legal responsibility for the operation of an organization.
24. **Independent contractor** has the same meaning as set out in 26 M.R.S. § 1043 and 39-A M.R.S. § 102.
25. **Interactive telecommunication system** means multimedia communication equipment that permits, at a minimum, two-way, real-time interactive communication between the resident and the distant-site clinician or practitioner.
26. **Isolation** means removing a resident from a stimulus by use of involuntary separation and restricted activity. Isolation may mean restriction with adequate supervision in an unlocked room. Isolation does not mean confinement in a locked room.
27. **Jeopardy** means a determination by the Department that a situation may have caused, or is likely to cause, serious injury, physical or psychological harm, impairment or death.
28. **Legal guardian** means a person or persons with an ongoing legal responsibility for caring for a resident, including the biological or adoptive mother and/or father or a court-appointed legal guardian.
29. **License** has the same meaning as set out in 5 M.R.S. § 8002.
30. **Licensee** means a facility issued a license by the Department for the operation of a children's residential care facility.
31. **Licensing authority** means the unit(s) or person(s) authorized by the Department to issue licenses or approvals under this rule.
32. **Mechanical restraint** means the restriction by mechanical means of a resident's mobility and/or ability to use his/her hands, arms or legs, except when such restriction is primarily for the treatment of physical injury.
33. **Mental health treatment program** means a specialized program of mental health services provided by a licensed children's residential care facility in accordance with Section 8(A) of this rule.
34. **Order of correction** means a Department order of correction, or other action in accordance with this rule when a children's residential care facility fails to provide an

acceptable plan of correction or fails to implement its Department-approved plan of correction.

35. **Organization** means a licensed residential facility, established to operate, conduct or maintain a children's residential's residential care facility in the State in accordance with this rule and applicable statutes.
36. **Passive physical restraint** means the least amount of direct physical contact required on the part of a staff member to prevent a resident from harming himself or herself or others.
37. **Placing agency** means any individual, agency or organization, either publicly or privately operated, legally authorized to place a resident into the care of a children's residential care facility.
38. **Plan of correction (POC)** means a document prepared by a licensed children's residential care facility in response to a Department-issued statement of deficiencies that describes with specificity how and when the facility must correct deficiencies.
39. **Relatives** means natural or adoptive mother, father, brother, sister, grandparent uncle, aunt, niece, nephew, first cousin.
40. **Representative** means a person who has been designated in writing by the resident or by the resident's legal guardian to aid the resident in upholding his or her rights. The representative must not be a resident of or a staff person currently employed by the organization that is providing or ensuring the delivery of services to the resident.
41. **Resident** means an individual who receives children's residential care facility services. Residents include children, and adults in care between the ages of 18 and 21. For the purpose of this rule, resident has the meaning as client.
42. **Residential treatment facility with secure capacity**
 - **Children's residential care facility with secure capacity (Level 1 Facility)** means a secure capacity facility that provides a mental health program to a resident whose diagnostic assessment indicates that the persistent pattern of a resident's mental health presents a likely threat of harm to self or others and requires treatment in a locked setting that prevents the resident from leaving the program. (See Section 8(D) of this rule).
 - **Children's residential care facility with secure capacity and psychiatric treatment (Level 2 Facility)** means a facility other than a hospital, that provides psychiatric and intensive mental health services to a resident. In a Level 2 Facility, the treatment of a resident's psychiatric condition requires medical supervision seven days per week and 24 hours per day, in a residential setting, and under the direction of a physician. This definition includes facilities licensed under 22 M.R.S. § 8101(4-B) and includes a children's psychiatric residential treatment facility (PRTF). (See Section 8(E) of this rule).
43. **Restraint** means any manual method, physical or mechanical device, material or equipment that immobilizes or reduces the ability of a resident to move his/her arms, legs, head or body freely that is not a protective device; or a drug or medication when it is

used to manage resident behavior or restrict freedom of movement and is not a standard treatment or dosage for the resident's condition.

44. **Rights of recipients** has the same meaning as set out in 14-193 Code of Maine Rule (C.M.R.) Chapter 1 (Rights of Adult Recipients of Mental Health Services); 14-472 C.M.R. Chapter 1 (Rights of Recipients of Mental Health Services Who Are Children In Need of Treatment); and applicable statutes.
45. **Seclusion** means the solitary, involuntary confinement for any amount of time of a resident in a room or a specific area from which egress is denied by a locking mechanism.
46. **Serious injury** means any significant impairment of the physical condition of the resident as determined by qualified medical personnel. Serious injury includes but is not limited to, burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.
47. **Service plan** also means treatment plan and is a comprehensive time-limited, goal-oriented, individualized plan for the care, treatment and education of a resident in care of a facility. The service plan is based on a current comprehensive evaluation of the resident's needs.
48. **Site** means the physical location(s) where a licensed children's residential care facility provides services.
49. **Statement of deficiencies (SOD)** means a document issued by the Department that describes with specificity deficiencies that require action on the part of the children's residential care facility, to return the facility to compliance with licensing laws and rule(s).
50. **Substance abuse** means the use of alcohol and/or other drugs, licit or illicit that results an individual's physical, mental, emotional or social impairment.
51. **Substance abuse treatment facility** means a children's residential substance abuse care facility that is maintained and operated for the provision of substance abuse treatment and rehabilitation services, as outlined in Section 8(B) of this rule. A substance abuse treatment facility is licensed by the Department of Health and Human Services.
52. **Time out** means the restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control.

SECTION 3. PROGRAM ADMINISTRATION

A. GOVERNING AUTHORITY

1. The organization's governing authority must comply with specialized program standards (as applicable) and program-specific standards set out in this rule and applicable statutes.
2. **Responsibility.** The governing authority has ultimate managerial control and legal responsibility for the organization's operation.
3. **Legal authority to operate.** The organization must maintain documentary evidence of its legal authority to operate in the State of Maine, including bylaws, articles of incorporation, charter, partnership agreement, constitution, articles of association or similar documents as applicable. This information must be made available to the Department upon request.
 - a. An organization operating as a corporation, partnership, or association, whether for-profit or not-for-profit, must maintain records of the names and current addresses of officers and directors.
 - b. An organization operating as a for-profit entity must maintain a current list of the names and addresses of its principal owners.
4. **Governance.** The governing authority of an organization may reside in an individual or a board of directors. The composition and structure of the governing authority must be adequate to discharge its responsibilities. All organizations must minimally have either:
 - a. A board of directors, which must:
 - i. Include community members who reflect diverse perspectives;
 - ii. Meet, at a minimum, on a quarterly basis;
 - iii. Maintain a record of meetings that includes the dates, attendance and topics discussed; records of the board of director meetings must be made available to the Department upon request;
 - iv. The board of directors must maintain a current record of its membership including the name, address, contact information, position and term of office of each member;

or
 - b. An advisory board which must:
 - i. Have a mechanism for obtaining feedback from residents that includes a procedure for direct input to the advisory board; including community members and local public officials who reflect diverse perspectives;
 - ii. Meet, at a minimum, on a quarterly basis;
 - iii. Provide advice to the governing authority;

- iv. Maintain a record of meetings that includes the dates, attendance and topics discussed; records must be made available to the Department upon request; and
 - v. The governing authority must maintain a current record of the membership of the advisory board including the name, address and contact information of each member.
5. **Prohibited.** The following persons are prohibited from serving as the governing authority:
- a. An employee of the State or federal government who has regulatory oversight of the organization.
 - b. An employee, or a family member of an employee, assigned responsibilities associated with the licensing or regulatory oversight of the organization, or associated with contracting functions of an agency that purchases the services of the organization.
6. **Compliance with laws.** The governing authority must ensure that the organization has current valid licenses for each of its organizations and facilities.
7. **Responsibilities.** The governing authority is responsible for and has authority over the policies and operations of the organization. The governing authority's responsibilities, include but are not limited to, the following provisions:
- a. Ensures the organization's continual compliance and conformity with all relevant laws and regulations, whether federal, State or local, governing the operation of the program or facility, including but not limited to those set out in this rule;
 - b. Approves written policies and procedures required by this rule. In consultation with the administrator, develops and implements a process to review and update the organization's policies and procedures at least annually;
 - c. Financial oversight of the organization;
 - d. Reviews and approves the organization's annual budget;
 - e. Reviews and accepts the organization's annual audit and annual financial report;
 - f. Reviews and accepts the results of the organization's licensing survey and any associated plan of correction;
 - g. Provides physical facilities, staff, equipment, supplies and other resources to provide licensed services;
 - h. Designates a person to act as administrator and delegates to the administrator sufficient authority to fulfill his or her responsibilities;
 - i. Completes an annual written evaluation of the performance of the administrator;
 - j. Oversees the implementation of the organization's quality improvement program;

- k. Provides written notification to the Department within two business days after the children's residential care facility receives notice of any legal proceedings related to the provision of services or the continued operation of the children's residential care facility, whether brought against the facility or against the facility's personnel;
 - l. Abuse and neglect in the facility. The organization must ensure that direct access workers, students and volunteers do not abuse or neglect residents in care in any way, including physical, sexual or emotional abuse.
 - m. Legal proceedings, include but are not limited to, bankruptcy, civil rights complaints, professional licensing body sanctions, lawsuits, alleged criminal activities by personnel that have implications for the programmatic or fiscal integrity of the organization or the safety of its residents.
- 8. **Conflict of interest.** The governing authority is subject to the organization's written conflict of interest policy.
 - 9. **Fraud or abuse.** The facility must report any suspected or identified fraud or abuse by providers, legal guardians or residents and submit supporting documentation to the Department.

B. ORGANIZATIONAL CHART

- 1. The organization must have a written, up-to-date organizational chart and policies governing the line of authority, communication, staff responsibility and staff assignment.

C. PROGRAM ADMINISTRATOR

- 1. The administrator or designee must demonstrate the ability to manage the affairs of the facility. The administrator's duties, include but are not limited to, the following:
 - a. The program administrator or designee ensures immediate, telephone notification within four hours and written notification within 24 hours to the Department of any critical incident as required by this rule;
 - b. Ensures notification to the Department within 24 hours after receiving notice or learning of an arrest or indictment of organizational personnel related to criminal activity that is alleged to have occurred on the grounds of the organization or any location where services are provided; and
 - c. Provide written notification upon any change of administrator. The licensed organization must notify the Department at least 30 calendar days prior to a planned change or within 10 calendar days of an unplanned change in the organization's administrator.

D. ANNUAL PROGRAM EVALUATION

1. The facility must complete an annual program evaluation. The written program evaluation must be available to the Department upon request and must address at least the following:
 - a. General program effectiveness in relation to stated goals and community needs;
 - b. General staff effectiveness and staffing patterns;
 - c. Staff turnover rate;
 - d. Review of grievances and complaints;
 - e. Summary of incident reports;
 - f. Frequency of use of restraints and isolation and the frequency of resident elopement;
 - g. Rationale for the grouping of residents;
 - h. Emergency and safety procedures;
 - i. Frequency of unplanned discharges of residents in care; and
 - j. Assessment and evaluation of treatment services.

E. FINANCIAL

1. Financial accountability and viability. The organization's financial accountability and viability must be achieved through the application of sound financial management practices that are consistent with legal and regulatory requirements.
2. Management systems. The organization must maintain a business management system, including written policies and procedures to assure maintenance of complete and accurate accounts, books and records.
 - a. The organization must identify staffing positions responsible for financial matters.
 - b. The governing authority is responsible for assuring the separation of duties in an adequate manner to prevent error and fraud.
3. Budget. The organization must develop a formal, annualized line-item budget approved by the governing authority, indicating revenues and expenses for the current fiscal year.
4. Annual financial audit. The organization must obtain an annual financial audit of the organization. Audit reports and financial records are subject to Department review upon request.

SECTION 4. LICENSE APPLICATION REQUIREMENTS

A. DEPARTMENT REVIEW OF APPLICATION

1. **Records and application review.** Prior to securing an initial license, a completed application must be submitted to the Department.
 - a. Application must be complete. A complete initial or renewal application means that all required information will be completed on the Department-approved form, and that form has been received by the Department with all required documentation. Incomplete applications on which no action has been taken by the applicant after 60 calendar days must be void.
 - b. Documents required with initial application. The following documents must be submitted with the completed initial application form:
 - i. Statement of purpose which specifies the facility's philosophy, purposes, program orientation and describes both short and long term aims. The statement must identify the types of services provided and the characteristics of the residents to be served by the program;
 - ii. Statement of ownership;
 - iii. An organizational chart with an explanation of lines of accountability and authority;
 - iv. A list of governing body members, identifying the office held by the member, and member's addresses and other contact information;
 - v. Staff roster;
 - vi. Sample resident file;
 - vii. A list of all services and programs the applicant intends to provide complete with program description;
 - viii. Certificate of occupancy;
 - ix. A description of the location and a sketch of the floor plan;
 - x. A written financial plan projected for the term of the license which demonstrates the ability of the applicant to provide the services for which they are seeking licensure;
 - xi. Emergency, disaster, hazard and evacuation plan;
 - xii. Close of business plan. A written close of business plan governing all organizational components, including record storage and access and evidence of the bond or other financial instrument that covers the costs associated with the close of business;
 - xiii. A copy of all policies and procedures to demonstrate compliance with regulations. The following policies are required for initial licensure:

- 1) Child abuse;
- 2) Grievances;
- 3) Family involvement;
- 4) Communication;
- 5) Community interactions;
- 6) Internet and social media;
- 7) Healthcare including medication administration and psychotropic medication, and infectious disease;
- 8) Personnel including job descriptions and a staff orientation training plan, including volunteers and students;
- 9) Recreation;
- 10) Group management including living arrangements and daily routines;
- 11) Behavior management;
- 12) Eligibility criteria, education and vocational services;
- 13) Work and employment;
- 14) Rights of privacy and confidentiality;
- 15) Religion;
- 16) Conflict of interest;
- 17) Managing critical incidents;
- 18) Continuity of care plan;
- 19) Record management and retention; and
- 20) Diversion control plan.

Other policy requirements and specific guidelines can be found in Section 5(E) of this rule.

- c. **Renewal of license.** Whenever a children's residential care facility has made timely and sufficient application for renewal of a license, the existing license must not expire until the status of the application has been finally determined by the Department. A renewal application must be received by the Department at least 60 days prior to the license expiration date. The renewal application must include:

- i. **Financial report.** An updated budget and financial report which demonstrates the facility's financial capability to carry out its program for the licensing period;
 - ii. **Documentation of changes.** Any documentary information which has changed since the time of its previous application; and
 - iii. **Renewal of expired license.** A license may be renewed if a completed application is received by the Department at least 60 days prior to the license expiration date. A license is non-renewable after the expiration date. A facility for which the license has expired must obtain a new licensure in order to continue operations. Whereas an expired license is non-renewable, a facility with an expired license must submit an application for a new license and is subject to all requirements governing new applications. The Department will not back date licenses for facilities that failed to submit renewal applications prior to expiration of the facility's license.
- d. **Waiver request.** All requests for a waiver of any licensing regulation within this rule, or a request for a renewal of any waiver granted under a current licensure must be submitted in writing to the Department of Health and Human Services, Maine Center for Disease Control and Prevention.
 - e. **Issuance of license.** Upon receipt of an application for a license or renewal thereof, the Department will inform the applicant of the steps it will follow in the licensing process which must include interviews, site visits, review of records, and technical assistance related to meeting and maintaining licensing requirements.
2. **Inspections**
- a. **Visits to determine compliance.** Any employee authorized by the Department will, at any reasonable time, have the right of entry and may inspect the facility and any records required by this rule in order to determine compliance with law and with rules established by the Department, 22 M.R.S. § 7804. The employee must have access, in private, to any resident of the facility for the purpose of investigating a suspected violation of law and rules established by the Department. An employee authorized by the Department may enter a facility which the Department knows or believes is being operated without a license only with the permission of the owner or person in charge or with a search warrant from the District Court authorizing entry and inspection.
 - i. Prior to approving a license for renewal, the Department will issue a statement of deficiencies as appropriate. The Department will issue a license upon an accepted and completed plan of correction.
 - ii. Availability of Information. The Department will have access to any information which the facility is required to have under this rule and any information reasonably related to assessment of compliance with this rule.
 - b. **Fire and safety inspection.**
 - i. Upon receipt of an application for a license or renewal thereof, the Department will contact the State Fire Marshal's Office to request an inspection of the applicant's physical plant to ensure compliance with appropriate state and local regulations regarding safety. The Department will request copies of such inspection reports.

SECTION 5. CORE LICENSING REQUIREMENTS

A. SERVICE TYPES

1. **Basic licensed services.** Children's residential care facilities may be licensed to provide the following basic services:
 - a. Crisis services;
 - b. Trauma based services;
 - c. Transitional living services;
 - d. Services for pregnant and parenting individuals;
 - e. Services to treat autism spectrum disorder (ASD);
 - f. Problematic sexualized behaviors; and
 - g. Other Department-approved services.
2. **Specialized licensed services.** In addition to providing basic residential care services, a children's residential care facility may be licensed to provide one or more of the following specialized services:
 - a. A mental health treatment program;
 - b. A substance abuse treatment program;
 - c. An education program; or
 - d. A children's residential treatment facility with secure capacity, both Level 1 and Level 2.

B. LICENSE TYPES

1. **Provisional license.** The Department must issue a provisional license for a term of no less than three months and no more than 12 months to an applicant that:
 - a. Has not previously operated as a children's residential care facility, or is licensed, but has not operated during the term of that license;
 - b. Complies with all applicable laws and rules, except those which can only be complied with, once residents are served by the applicant; and
 - c. Demonstrates the ability to comply with all applicable laws and rules by the end of the provisional license term.
2. **Full license.** A full license may be issued for a term of two years to an applicant that demonstrates compliance with this rule and applicable statutes.

3. **Conditional license.** A conditional license may be issued by the Department, when the facility fails to comply with applicable laws and rules, and in the judgment of the Commissioner, the best interest of the public would be so served by issuing a conditional license. The conditional license must specify when and what corrections must be made during the term of the conditional license.
4. **Amended license required when changes occur.** A licensed facility must notify the Department prior to implementation of any proposed change or modification and request an updated license. Upon completion of its review, the Department may issue an amended license. The term of the new amended license remains the same as the original license but the effective date for the approved change may be different.
5. **Waivers of a licensing rule.** A facility may request a waiver of a provision of this rule. The facility must provide clear and convincing evidence, including, at the request of the Department, expert opinion, which demonstrates to the satisfaction of the Department that the facility's alternative method will comply with the intent of the rule provision. The Department may waive or modify a provision of this rule under the following terms and conditions:
 - a. The provision is not mandated by State or federal law;
 - b. The waiver must not violate the rights of person(s) receiving services;
 - c. The facility must submit to the Department a written request for a waiver at the time of the initial application for a license or at the time of the renewal of the license;
 - d. The request for a waiver must be accompanied by documentation that demonstrates that the terms of the waiver comply with the intent of the rule;
 - e. The Department may consult with subject matter experts prior to issuing a decision regarding the request for a waiver;
 - f. A waiver, when granted, must be for a specific period not to exceed the term of the license;
 - g. The facility may request a renewal of the waiver at the time it requests the renewal of its license; and
 - h. A violation of a waiver is enforceable as rule and is subject to the enforcement procedures in this rule.
6. **Issued license: extends to identified physical sites.** The license issued by the Department extends to the physical sites identified on the letter accompanying the license.
7. **Specifications of a license.** The license issued by the Department includes the following information:
 - a. The legal name of the individual or organization and the 'doing business as' name, as applicable;
 - b. The location of the physical sites covered under the license;

- c. The number of licensed residential beds at a children's residential care facility; and
 - d. The effective date and term of the license.
8. **License is non-transferable.** A license is non-transferable and non-assignable.
 9. **License posted.** A copy of the current valid license from the Department listing licensed sites of the organization must be conspicuously posted where it may be seen by the public at each of the physical sites where services are provided.

C. QUALIFIED STAFF

The children's residential care facility's personnel must be qualified to provide services by education, training, supervisory experience, licensure or the equivalent, consistent with job descriptions and required qualifications. The facility must maintain a pattern of staffing that is adequate for the census, age, capabilities, functioning levels, acuity, and other characteristics of the facility's target population. Staff must also meet the requirements of Section 6--Personnel Qualifications and Training.

1. The facility's staffing pattern must comply with licensing, credentialing and training requirements, including access to supervision and consultation, directly or through independent contractors and across programs.
2. The facility must ensure that personnel providing services for a resident are acting within the scope of their individual license or certification to meet the needs of residents.

D. INSPECTIONS

The Department's authorized representative has the right to enter to inspect for compliance with this rule at any time consistent with the usual hours of operation of the facility, in accordance with 22 M.R.S. § 7804.

1. **Inspections required.** The facility must submit to regular and unannounced inspection surveys and complaint investigations to receive and maintain a license.
 - a. The Department must be granted access to any documents and records required within a reasonable amount of time to ensure compliance with this rule.
 - b. The Department may access electronic records either through a State-owned computer or device, through a computer or device provided by the facility or with assistance from a facility's staff member.
 - c. The Department may copy any documents and records required by this rule as evidence of compliance.
 - d. The Department has the right to meet or speak in private with any person employed by, or receiving services from, the facility for determining compliance with this rule, except that a person receiving services has the right to refuse to meet or speak to the Department's authorized representative.

2. **Complaint investigation**

- a. **Complaints.** The Department will accept complaints from any person about alleged violations of this rule. The facility must not retaliate against any resident or his/her representative for filing a complaint. Complainants have immunity from civil or criminal liability when the complaint is made in good faith. Any licensing violations noted because of a complaint investigation will be provided to the facility in writing, in a SOD or Violation Identification Letter.
- b. **Department's toll-free number posted.** The facility must post the Department's toll-free telephone number and other contact information, if available, for residents and legal guardians to contact the Department to make a complaint about the facility.
- c. **Organization's grievance procedure.** The facility must educate the residents and legal guardians about the organization's written grievance procedure, and must include a signed resident notification of receipt of such education in the resident's record.
- d. **Department complaint investigation.** The Department may investigate or have investigated on its behalf complaints, incidents, suspected abuse, neglect, and exploitation, inadequate care or supervision, or the facility's failure to comply with this rule.
 - i. **Federal or State laws.** Department investigations may also involve suspected violation of State or federal law or rules.
 - ii. **On-site investigations.** On-site Department investigations may be unannounced.

3. **Operating without a license: enter and inspect.**

The Department is authorized to inspect facilities operating without a license. If the facility refuses entry during usual hours of operation, the Department will seek an administrative warrant pursuant to Rule 80E of the Maine Rules of Civil Procedure.

E. POLICIES REQUIRED BY FACILITY

1. **Eligibility and access to services**

- a. **Eligibility criteria.** The facility must have written policies and procedures regarding eligibility criteria. The facility must, when applicable, have policies and procedures governing self-admission which must include procedures for notification of legal guardians.
- b. **Intake, screening, and admission policies.** The facility must have written policies and procedures for intake, screening, and admission processes.
- c. **Out-of-State referrals.** A facility accepting referral of a resident who resides in another state must comply with the terms of the Interstate Compact on Juveniles and the Interstate Compact on the Placement of Children.
- d. **Non-discrimination in providing services.** The facility must not refuse admission to any resident on the grounds of race, sex, sexual orientation, religion, disability or ethnic

origin. The facility may limit admission, if the facility is not adequately designed to meet the specific resident's needs.

- e. **Americans with Disabilities Act.** Facilities must be in compliance with the *Americans with Disabilities Act of 1990* (ADA).
2. **Closure policy.** The governing authority is responsible for developing policies and procedures related to closure of the organization, its programs or sites. The closure policy must include, at a minimum:
- a. **Notification to residents and legal guardians.** Unless an emergency exists, the facility must provide residents and legal guardians with a written notice of closure at least 30 calendar days prior to the closure date;
 - b. **Written notice.** The written notice of closure will include, at a minimum:
 - i. The reason for the closure;
 - ii. The effective date of the closure; and
 - iii. The name and address of administrative staff responsible for the oversight of the closure.
 - c. **Notification to Department.** The facility will notify the Department, in writing, of its intent to close as soon as possible, but no later than one business day after the governing body has made the determination to close;
 - d. **Ongoing care of residents.** The facility must document ongoing assessment and treatment of residents, including provision of medications, if applicable during the closure;
 - e. **Provision of information.** The facility must provide resident information that will be sent to the receiving program to ensure continuity of care;
 - f. **Records management.** A facility must maintain a specific plan for the secure storage and accessibility of the organization's records.
3. **Child abuse policy.** The facility must adopt written policy for handling known instances of child abuse or neglect and situations in which there exists reasonable cause to suspect an incident of child abuse or neglect.

When such abuse or neglect or suspected abuse or neglect occurs within the facility, the facility must ensure that the staff member involved does not work directly with the resident involved until the Department's investigation is completed.

4. **Critical incident response policy**
- a. **Managing critical incidents.** The organization's policy must describe in detail how it reports, manages and evaluates critical or potentially critical incidents.

- b. **Reporting critical incidents.** The policy must include procedures for reporting at least the following events:
 - i. **Critical incidents.** Critical incidents must be reported in compliance with the applicable core standards set out in this rule.
 - ii. **Other critical incidents.** The organization's policies must include a procedure for identifying other critical or potential critical incidents and establish the appropriate response to these critical incidents, including reporting requirements, as applicable.
 - c. **Notification of critical incidents.** At a minimum, the children's residential care facility's policies must require notifying the Department and the resident's legal guardian that a critical or a potentially critical incident has occurred.
 - i. In the case of a resident, the placing or responsible agency must be notified in the event of the resident's death, serious illness, incident involving serious bodily injury to the resident or a severe psychiatric episode involving the resident. The organization must notify the Department within 24 hours of the death of a resident.
 - ii. The organization must cooperate in arrangements made for examination, autopsy and burial in the event of a resident's death.
- 5. **Educational and vocational services policy.** The facility must have a policy governing residents' educational and vocational services, including a written description of its educational program or its policy for ensuring that each resident attends an appropriate educational program in accordance with State and local laws. The educational policy must describe vocational or pre-vocational services and life-skills training appropriate to the age and abilities of the residents.

The education policy must describe how the facility:

 - a. Provides appropriate space and supervision for quiet study after school hours;
 - b. Ensures that each resident has access to necessary reference materials; and
 - c. Establishes routine communication between facility staff involved with the resident and the resident's educational program.
- 6. **Work and employment policy.** The facility must submit evidence that any work-study program used complies with all State and federal child labor laws and that any child engaged in productive work at or outside of the facility is protected in accordance with State and federal child labor laws. The facility must:
 - a. Ensure that any resident who is not required to attend school is either gainfully employed or enrolled in a training program geared to the acquisition of suitable employment or necessary life skills;
 - b. Use work assignments only insofar as they provide a family experience for residents and are not used as unpaid substitution for adult staff; and

- c. Assign work in accordance with the age and ability of the resident and must schedule work, so as not to conflict with other activities in the resident's service plan.
7. **Recreational activities policy.** The facility must have a written policy governing recreational activities that includes at least the following:
- a. Assessing the ability of a resident to participate in a potentially dangerous or unsafe recreational activity before permitting a resident to do so;
 - b. Obtaining the consent of a resident's parent or legal guardian before permitting a resident to participate in a dangerous or unsafe activity, unless the activity is part of the resident's service plan;
 - c. Exception to consent. No parental or legal guardian consent to participate in recreational activities is required when the resident is a client of a substance abuse treatment program or an integrated substance abuse and mental health treatment program and the resident has not given the facility permission to contact the parent or legal guardian;
 - d. Providing appropriate and adequate staff supervision of residents during potentially dangerous or unsafe recreational activities; and
 - e. Identifying a range of indoor and outdoor recreational and leisure activities that are available including community recreational activities based on the interests and needs of the residents receiving services in the residential care facility.
8. **Medication policy and procedure.** Children's residential care facility's must have medication administration policies and procedures that comply with applicable medication administration core standards and specialized program standards set out in this rule and applicable statutes.
- a. Facilities must have policies and procedures for ordering, receiving, storing, administering, documentation, packaging, discontinuing, and destruction/waste of medications and biologicals.
9. **Resident rights policy.** The children's residential care facility must have a written policy concerning the rights and responsibilities of children and adults ages 18 through 21. The policy must include at minimum, the following rights:
- a. Right to freedom from abuse or neglect;
 - b. Right to freedom from violation of rights;
 - c. Right to confidentiality;
 - d. Right to freedom from harmful actions or practices;
 - e. Right to a safe and healthy environment;
 - f. Right to be free from discrimination;
 - g. Right to consideration and respect;

- h. Right to be informed about available services;
 - i. Right to inspection results;
 - j. Right to notice of licensing actions;
 - k. Right to a service plan;
 - l. Right to freedom from unreasonable search;
 - m. Right to a variety of activities;
 - n. Right to reasonable modification and accommodation;
 - o. Rights regarding transfer and discharge in residential care;
 - p. Right to communicate;
 - q. Rights of recipients of mental health services; and
 - r. Notification of resident rights.
10. **Infectious disease policy.** Facilities must have an infectious disease policy, per Section 5(M)(6) of this rule.
 11. **Healthcare policy.** Facilities must have a resident healthcare policy, per Section 5(M) of this rule.
 12. **Group living arrangements policy.** Facilities must have a group living arrangements policy, per Section 7(B) of this rule.
 13. **Discharge policy.** Facilities must have a policy for discharges including emergency discharges, per Section 5(L)(2) of this rule.
 14. **Smoking policy.** Facilities must have a policy regarding smoking at the facility. Facilities may prohibit smoking on the premises or have a designated smoking area on the premises, per 22 M.R.S. § 1580-A (3) and Rules Relating to Smoking in the Workplace, 10-144 C.M.R. Ch. 250. (See Section 5(P)(25) of this rule).
 15. **Record management policy.** The organization must have a written records management policy. The organization's record management policy must include objective criteria to determine when to allow a resident to access his/her record.
 - a. **Legibility and integrity of entries to records.** The organization will establish policies that include a plan to ensure legibility and integrity of entries to records, which, at a minimum, will include:
 - i. The appropriate manner to make corrections to records and prohibiting the deletion of prior record entries;
 - ii. The prohibition of back-dating entries;

- iii. A provision for making late entries to records, which must include a statement identifying the entry as late; and
 - iv. A requirement for an easily recognizable date for every record entry.
- 16. **Behavior management policy.** The organization must have policies and procedures governing the management of resident behavior. The facility must review the policies annually and update them as necessary. The facility must document this review and the policy must be available to the Department upon request. See Section 5(O) of this rule.
- 17. **Community interactions.** The facility must adopt written policies and procedures which describe the relationship between the facility and the community, involvement of residents in community activities and, strategies for the optimum use of community resources.
- 18. **Communication.** The facility must adopt written policies regarding visiting and other forms of resident's communication with family, friends and other persons important to the resident. The policies must encourage healthy family interaction, maximize the resident's growth and development and protect residents, staff and the facility from unreasonable intrusions in compliance with the following:
 - a. **Telephones.** The facility must provide a sufficient number of telephones for the resident's use and must have policies for resident's use of these telephones;
 - b. **Family communications.** The facility must make every possible effort to facilitate communication between a resident in care and the resident's parent(s) and/or legal guardian and must provide opportunities for a resident to visit with parent(s) or legal guardian and siblings;
 - c. **Privacy.** The facility must provide conditions of reasonable privacy for visits and telephone contacts between residents and their families; and
 - d. **Electronic devices.** The facility must provide a policy on the use of internet and personal electronic devices, including but not limited to, personal cell phones, gaming devices, tablets, and social media.

F. RECORDS REQUIRED BY FACILITY

- 1. **Record management.**
 - a. **Record** means all documentary material, regardless of media or characteristics, including, but not limited to, resident records, administrative, financial, health and personnel records made or received and maintained in accordance with law or regulation or in the transaction of business.
 - b. **Electronic records.** Electronic records, including without limitation, electronic health records, email and text messages are considered part of the record for purposes of this rule and must be made available upon request;
 - c. **Record maintenance.** Facilities must maintain clean, readable records in an orderly, accessible format in a secure and private space, and must have a record retention policy

that addresses archiving and destruction of records consistent with all applicable State and federal statutes. Records must be made available to the Department upon requests.

- d. **Record Retention.** The facility must maintain the resident's records for a period of not less than seven years after the resident attains the age of majority, unless specified otherwise in applicable State or federal laws. At that time the records may be disposed of in a manner which maintains the confidential nature of the material.

2. **Personnel records.**

- a. The facility must maintain a personnel record for each staff member which must include:
 - i. Employment history;
 - ii. Reference letters from former employers and/or personal references, or phone notes on such references, per Section 6(A);
 - iii. Results of background checks, per Section 6(B);
 - iv. Any required medical examinations, per Section 6(A);
 - v. Applicable professional credentials and certifications, per Section 6(A);
 - vi. Periodic performance evaluations, per Section 6(A);
 - vii. Personnel actions, other applicable materials, reports, and notes relating to the individual's employment with the facility;
 - viii. Starting and termination dates;
 - ix. A statement read and signed by the employee which clearly defines child abuse and neglect and outlines the responsibility to report all incidents of child abuse or neglect per 22 M.R.S. § 4011-A; and
 - x. Documentation of training programs attended, per Section 6(C);
- b. **Volunteer records:** The facility must maintain a personnel file for each volunteer having direct contact with the residents in care which must contain:
 - i. Volunteer employment history;
 - ii. Results of background checks;
 - iii. Reference letters or phone notes of reference checks; and
 - iv. A statement read and signed by the volunteer which clearly defines child abuse and neglect and outlines the responsibility to report all incidents of abuse or neglect, per 22 M.R.S. § 4011-A.

- 3. **Resident records.** Resident record entries must be made only by authorized personnel and must be:

- a. Specific, factual, relevant, and legible;
- b. Current, from intake through discharge;
- c. Completed, signed with identifying credentials, and dated by the person who provided the service.
- d. **Missing information.** The facility must place a written explanation in the resident's record for the absence of any required information.
- e. **Content of resident record.** The facility must maintain documentation in the resident's record in chronological order. The resident's record must include, but is not limited to, the following information:
 - i. Demographic information. The name, gender, race, religion, verified birthdate;
 - ii. Parent information. The name, address, telephone number, other contact information and marital status of the parent(s) of the resident;
 - iii. Legal guardian information. The name, address, telephone number, other contact information;
 - iv. Date of admission and source of referral;
 - v. Documents relating to referral and admission;
 - vi. The name, address, telephone number and relationship to the resident of the person with whom the resident was living if the resident was not living with his/her parent(s) prior to admission;
 - vii. Health records;
 - viii. Education records and reports;
 - ix. Service plans, assessments and crisis plans;
 - x. Progress notes; and
 - xi. Description of any tests ordered and performed and the results.
- f. **Incident reports.** Records of special or critical incidents, including all accidents, personal injuries and pertinent incidents related to the implementation of the resident's service plan. Incident reporting includes resident rights violations. The record must include documentation of who was notified of the incident.
- g. **Legal records.** Essential legal information, including the following:
 - i. Court records;
 - ii. Documents of legal guardianship; legal custody; powers of attorney and similar documents; and

- iii. Copies of all signed and dated releases and authorizations, including, but not limited to, the following:
 - 1. Current consent forms signed by the resident and legal guardian, allowing the facility to authorize all necessary medical care, medications, routine tests, immunization and emergency medical or surgical treatment;
 - 2. Forms authorizing release of the resident's information; and
 - 3. Forms acknowledging receipt of written notification of resident rights and responsibilities.
- h. **Resident access to resident's record.** A resident or the resident's legal guardian may access the resident's records in accordance with this rule.
- i. **Denial of resident access.** If serious harm is likely to result from a resident's review of his/her record, the facility may deny, or otherwise limit, a resident's access to part or all of the resident's record.
 - i. **Procedure to determine harm and denial.** The organization's record management policy must include objective criteria to determine when it would be harmful to allow a resident to access his/her record.
 - ii. **Written findings.** The organization's decision to deny a resident's access to his/her record must be based on objective criteria.
 - iii. **Review of findings.** The organization's administrator or designee must review the findings and approve or deny a resident's access to the resident's record.
 - iv. **Decision.** The organization must render a written decision, including the findings of fact, to deny a resident's access to part or all of the resident's record. The decision is included in the resident's record.

G. REPORTING REQUIREMENTS

- 1. **Requirement to report abuse and neglect**
 - a. **Report child abuse or neglect.** The facility must immediately report any suspected abuse or neglect of a child under the Department of Health and Human Services, Office of Child and Family Services, Child Protective Services, at 1-800-452-1999, available 24 hours per day/7 days per week.
 - b. **Report adult abuse, neglect or exploitation.** The facility must immediately report any suspected abuse, neglect or exploitation of an incapacitated or dependent adult to the Department of Health and Human Services, Office of Aging and Disability Services, Adult Protective Services, at 1-800-624-8404, 24 hours per day/7 days per week.
 - c. **Reporting requirement.** All facilities are required to report to the Department when there is reasonable cause to suspect abuse or neglect of a resident. The facility must inform all direct access personnel of their status and responsibility as mandated reporters of suspected abuse or neglect of a resident. The facility must ensure that the telephone

number of the Department's Child Protective Intake Unit (1-800-452-1999) is readily available to personnel. If applicable, the facility must ensure that the Office of Aging and Disability Services, Adult Protective Services Intake Unit is available (1-800-624-8404).

2. **Requirement to report resident right violations.**

- a. **Mandatory reporting of rights violations.** Any person or professional who provides health care, social services, mental health or substance abuse services or who administers a children's residential care facility who has reasonable cause to suspect that the rules pertaining to resident's rights or the conduct of child care have been violated must report within 24 hours, the alleged violation as required by the Department of Health and Human Service, Office of Child and Family Services and the Office of Aging and Disability Services (as applicable). Documentation will be maintained in the facility that a report of rights violations has been made.

3. **Requirement to report changes to facility**

- a. **Adding or deleting a service, program, or substantial policy change.** The organization must notify the Department ninety calendar days prior to the addition/deletion of a service, program, or site. No new service, program, or site may be commenced without Department approval, and the license must demonstrate appropriate transfer of care for residents prior to the termination/deletion of a service, program, facility, or site.
- b. **Change in location, or name.** The facility must notify the Department at least 90 calendar days prior to a change in location, or name. The facility may not increase resident capacity or begin new construction, additions or alterations without the Department's prior approval.

4. **Requirement to report legal proceedings**

- a. The facility must provide written notification to the Department within two business days after the facility receives notice of any legal proceedings related to the provision of services or the continued operation of the organization, whether brought against the organization or against the children's residential care facility.

5. **Requirement to report critical incidents.**

- a. The program administrator or designee must ensure immediate, telephone notification within four hours and written notification within one business day to the Department of any critical incident as required by this rule;
- b. The program administrator or designee must ensure notification to the Department within 24 hours after receiving notice or learning of an arrest or indictment of organizational personnel related to criminal activity that is alleged to have occurred on the grounds of the organization or any location where services are provided.
- c. The facility must provide written notification upon any change of administrator. The licensed organization must notify the Department at least 30 calendar days prior to a planned change or within 10 calendar days of an unplanned change in the organization's administrator.

- d. At a minimum, the facility must notify the Department and the resident's legal guardian that an adverse, or potentially adverse, event has occurred. In the case of a resident, the placing or responsible agency must be notified in the event of the resident's death, serious illness, incident involving serious bodily injury to the resident or a severe psychiatric episode involving the resident.

H. RIGHTS OF RESIDENTS

1. **Resident rights.** A resident within a children's residential care facility has the following rights:
 - a. **Right to freedom from abuse or neglect.** Residents must be free from mental, verbal, physical or sexual abuse or neglect. Suspected abuse or neglect must be reported to the Department, in accordance with this rule and applicable statutes. Documentation must be maintained in the facility that a report has been made. See 22 M.R.S. § 4011-A;
 - b. **Right to freedom from violation of rights.** Suspected violations of the rights of residents in a children's residential care facility as set out in this rule and applicable statutes must be reported to the Department;
 - c. **Right to confidentiality.** Resident's records, and information about residents in the children's residential care facility are confidential;
 - d. **Right to freedom from harmful actions or practices.** Residents have the right to freedom from harmful actions or practices and practices that are potentially harmful;
 - e. **Right to a safe and healthy environment.** Residents have a right to an environment that meets the health and safety standards set out in this rule and applicable statutes;
 - f. **Right to be free from discrimination.** Residents must be provided services without regard to race, age, national origin, religion, disability, sex, sexual orientation or family composition;
 - g. **Right to consideration and respect.** Residents must be treated with dignity, consideration and respect in full recognition of their individuality;
 - h. **Right to be informed about available services.** Resident's representatives must be informed of items or services that are included in the facility's rate. They must also be informed of items or services that may be available but are not covered by the facility's rate;
 - i. **Right to inspection results.** The children's residential care facility must inform resident's representatives that licensing inspection results are public information and available for examination upon request;
 - j. **Right to notice of licensing actions.** Residents' representatives must be notified in a timely manner by the residential care facility of actions proposed or taken against the children's residential care facility by the Department, including but not limited to, the decision to issue a conditional license, refusal to renew a license or imposition of fines or other sanctions;

- k. **Right to a service plan.** Residents have the right to participate in the development of their service plan and the facility's assistance in implementing any reasonable plan of service developed with community agencies;
- l. **Right to freedom from unreasonable search.** Every resident has the right to be free from unnecessary searches of the person, of personal space or of common areas. A search will only be conducted when staff have a reasonable belief that misappropriated articles are present or that certain items that would endanger the health or safety of a resident or other residents are present. Every search and the reasons therefor shall be documented.
- m. **Right to a variety of activities.** Residents have a right to a variety of activities, materials and equipment that meet their interests and capabilities;
- n. **Right to reasonable modification and accommodation.** To afford residents with disabilities the opportunity to participate in a children's residential care facility, the facility as required by law must comply with the following:
 - i. **Policies.** The children's residential care facility must make reasonable modifications to policies and practices to accommodate residents, parents and legal guardians with disabilities, unless to do so would be a fundamental alteration of the program; and
 - ii. **Facility.** The children's residential care facility must make the facility accessible to people with disabilities. Newly-constructed facilities and any altered portions of existing facilities must be fully accessible. When achievable without much difficulty or expense, existing facilities must immediately remove barriers, even if there are no residents with disabilities living in the facility. Installing offset hinges to widen a door opening and installing grab bars in toilet stalls are examples of achievable barrier removal.
- o. **Rights regarding transfer and discharge in residential care.** Each resident has the right to continued residence. The facility must show documented evidence of strategies used to prevent involuntary transfers or discharges. A resident must not be transferred or discharged involuntarily, except for the following reasons:
 - i. When there is documented evidence that a resident's tenancy constitutes a direct threat to the health or safety of him/herself or others;
 - ii. There must be documented evidence that the facility cannot meet the needs of the resident as the program is fundamentally designed; or
 - iii. The facility's license has been revoked, not renewed or voluntarily suspended.
- p. **Right to Communication.** The facility must ensure that residents may communicate with and maintain relationships with people who are important to them unless indicated differently in the resident's service plan. The facility must protect residents from unreasonable intrusions.
 - i. Residents may have access to phones, mail, email and other electronic communications.

- ii. If the facility has deemed it inadvisable for a resident to communicate with others, through electronic communications, the facility must notify the resident and legal guardian that electronic communication is denied, restricted or terminated. This restriction may also extend to specific people if the facility deems resident communication with those individuals inadvisable. The facility must enter a written, dated statement that includes the reasons supporting the decision in the resident's record.
- iii. The placement agency that provides the resident with ongoing case management services is notified when communication is restricted, denied or terminated. Nothing prohibits a child's attorney, clergyman, advocate or an authorized representative of the placing agency from visiting, corresponding with or telephoning the child.
- q. **Rights of recipients of mental health services.** Facilities providing residential behavioral health services or substance abuse treatment services must comply with the Rights of Adult Recipients of Mental Health Services (See 14-193 C.M.R Chapter 1); and the Rights of Recipients of Mental Health Services Who Are Children In Need of Treatment (See 14-472 C.M.R. Chapter 1). Facilities must promote and encourage residents to exercise their right to make informed choices.
- r. **Notification of resident rights.** The facility must inform each resident and legal guardian of these rights prior to or at the time of admission to the facility and must offer a copy of these rights. In addition, the facility must inform each resident and legal guardian within 30 calendar days of any changes to this section of the rule and must offer them with a copy of the change. The facility must provide accommodation for any communication barriers that exist, to ensure that each resident is fully informed of his/her rights.

I. ADMISSIONS

1. Placement agreement.

- a. The children's residential care facility must negotiate a written placement agreement at the time of the resident's admission that must include at least the following by reference or attachment:
 - i. The nature and goals of care including any specialized services to be provided;
 - ii. The religious orientation and practices of the resident, if any;
 - iii. Description of the roles and responsibilities of all agencies and persons involved with the resident and resident's family;
 - iv. Authorizations to care for the resident;
 - v. Authorizations to obtain routine and emergency medical care for the resident, including consent forms signed by the legal guardian as applicable prior to placement that allows the facility to authorize all necessary medical care, medications, routine tests, immunization and emergency medical or surgical treatment;
 - vi. Designation of responsibility for routine medical arrangements;

- vii. Arrangements regarding visits, mail, telephone calls, vacations, gifts and family contact and involvement; and
 - viii. Identification of the sources, terms and methods for paying the resident's board and other expenses.
- b. **Signatures on placement agreement.** The facility must ensure that a written placement agreement is signed by and provided to the resident, the parent or legal guardian, and a facility representative. A copy of the agreement will be given to the resident, and parent or legal guardian. A copy of the agreement must be placed in the resident's record.
 - c. When the involvement of the resident, the parent or legal guardian, the representative of the placing agency or other party is not feasible or desirable the reasons must be documented in the resident's record.
2. **Emergency admissions.**
- a. In an emergency requiring immediate placement, the facility must gather as much information as possible about the individual to be admitted and the circumstances requiring placement.
 - i. The facility must record this information in an "emergency admission note" within two days of admission which must include social health, family history, educational background, legal status, and other pertinent data including a statement defining the need for residential services.
3. **Intake evaluation.** The facility will accept an individual into care only when a current comprehensive intake evaluation including social, health and family history, educational and, if appropriate, psychological and developmental assessment, including history of prior suicidal gestures and harm to others, has been reviewed. This evaluation must contain evidence that a determination has been made that the residential placement is appropriate for the individual.
- a. **Medication assessment.** Upon admission, the facility must ascertain all medication a resident is currently taking and determine whether a physician should be consulted to review the medication needs of the resident considering the changed living circumstances.
 - b. **Information provided to resident.** As part of the admission orientation, the facility must make available the following:
 - i. A document explaining the facility's internal rules must be provided to each resident on admission. A copy of this document must be signed and dated and maintained in the resident record. A copy of the document explaining the facility's internal rules must be posted in a prominent place accessible to all residents;
 - ii. A copy of the facility's policies governing the behavior management of residents in care and must explain the facility's criteria for successful participation in and completion of the program;
 - iii. A description of normal daily routines;

- iv. A copy of the facility's policy governing visiting and other forms of communication with family, friends and other persons important to the resident;
 - v. A description of any religious policy including affiliation, if any;
 - vi. A description of the facility's education plan; and
 - vii. A copy of grievance procedures.
- c. **Information provided to legal guardian and referring agency when applicable.** Prior to placement, whenever possible, the facility must provide the legal guardian and placing agency with written information which must include:
- i. A description of the philosophy of the facility;
 - ii. A description of normal daily routines;
 - iii. A description of behavior management practices;
 - iv. Any specific treatment strategies employed by the facility;
 - v. Visiting hours and other procedures related to communication with residents;
 - vi. A copy of grievance procedures;
 - vii. A description of any religious policy including affiliation;
 - viii. A description of the education plan or program offered by the facility; and
 - ix. The name and telephone number of a staff person whom the legal guardian may contact on an ongoing basis.
- d. **Safety orientation.** During the resident's first full day in residential care, the facility must assign a staff member to orient the resident regarding emergency procedures and the location of emergency exits. A written confirmation that such orientation has occurred must be placed in the resident's record.
- e. **Release of information.** Unless otherwise permitted by law, the facility must, prior to releasing confidential information about a resident, obtain an informed consent form signed and dated by the resident's legal guardian that includes the following information:
- i. Identification of the person or agency to whom the information is to be disclosed, including the person's relationship to the resident;
 - ii. Identification of the specific information to be disclosed;
 - iii. The reason for disclosure; and

- iv. The expiration date of the consent, is not to exceed one year from the date of signature of the legal guardian. The facility must ensure that the release remains current and upon expiration a new release is obtained as appropriate; and
 - v. The guardian has the right to revoke consent for a release of information at any time.
- f. **Information about resident or resident's family.** The facility must maintain the confidentiality of resident's records. Staff of the facility must not disclose or knowingly permit the disclosure of any information concerning the resident or the resident's family to an unauthorized person.
 - g. **Photographs or electronic media.** The facility must obtain the written informed consent of the resident and legal guardian for the use of any photographs and electronic media images.
 - h. **Consent for fund raising, publicity or research.** The facility must obtain the written informed consent of the resident, if appropriate to the resident's capability, and consent of the resident's legal guardian prior to involving the resident in any activity related to fund raising or publicity for the facility.

J. COMPREHENSIVE ASSESSMENT

1. Comprehensive assessment.

- a. Within 30 days of admission the children's residential care facility must complete a comprehensive assessment of each resident to determine the need for treatment and services. The comprehensive assessment must be completed by a qualified person, as defined by the program. All methods and procedures used in this assessment must consider the resident's age, culture, background and dominant language or mode of communication.
- b. **Individualized assessment.** Comprehensive assessments must be individualized, and, strengths-based.
- c. **Medication.** The assessment identifies the medications the resident is currently taking, including prescribed and over-the-counter medications, and determines the need for a physician consultation to review the medication needs of the resident.
- d. **Assessment data.** Data collected during the comprehensive assessment must include, but is not limited to, the following:
 - i. The presenting need and precipitating factors related to the request for services;
 - ii. The resident and resident's family's strengths and needs as they relate to emotional, psychiatric and psychological health; physical health and nutritional; family relationships; housing and financial status; legal status; military status; recreational interests, vocational, educational, social, life skills development; and spiritual or religious status; and
 - iii. The resident's history, including family and social history; developmental history; mental and medical health history, including allergies and dental needs, as applicable; serious injury and surgery, past and current drug or alcohol use including the age of

onset, duration, patterns, consequences, types of previous treatment, response to previous treatment; description of periods of sobriety; status of co-occurring mental health and substance abuse conditions and successful strategies and interventions during periods of sobriety; and trauma history, including physical, emotional and sexual trauma.

- e. **Other Assessments.** The children's residential care facility provides or makes arrangements for the following assessments as appropriate:
 - i. **Specialized assessments.** Specialized assessments, include but are not limited to, a nutrition assessment, a cognitive functioning assessment, an assessment of the resident's capacity to make reasoned decisions, and a neurological assessment;
 - ii. **Crisis assessment.** A crisis assessment including but not limited to the potential need for crisis intervention services;
 - iii. **Assessment of physical barriers.** The assessment includes a review of physical and environmental barriers that may impede the resident's or family's ability to obtain services; and
- f. **Updating assessment.** A resident's assessment must be updated at least annually and when there is a change in the level of care, a change in status, or a major life event occurs.
- g. **Signature.** The dated signature and credentials of the person completing or updating the assessment must be included as part of the assessment documentation.
- h. **Assessment summary.** The comprehensive assessment must be summarized and include a diagnosis using the Diagnostic and Statistical Manual of Mental Health Disorders (American Psychiatric Association) (DSM) or the Diagnostic Classification of Mental Health and Development Disorders of Infancy and Early Childhood (DC 0-3) diagnosis, as appropriate.

K. SERVICE PLANS

1. **Service plan.** Children's residential care facilities must develop and provide ongoing review of each resident's individualized service plan.
2. **Resident participation.** Each resident must be encouraged to participate in the development and ongoing review of his or her service plan.
3. **Service plan team.** The service plan team must include at least the following participants as appropriate when developing or reviewing a resident's service plan: the resident; the facility staff responsible for implementing the resident's service plan on a daily basis; school personnel; the resident's parent or legal guardian; other significant persons involved in the resident's life; and the facility's clinical consultant. The facility's service plan team provides input and participates in the development and periodic review of the resident's service plan.

A planning meeting sign-in sheet should be maintained to document participants' participation in the planning process. When any of the above do not participate, the facility must include within the resident's record a written statement documenting its efforts to involve the person

and the reason participation did not occur. When the involvement of legal guardian or resident is contraindicated, the reason(s) must be documented in the resident's record.

4. **Coordination of services.** The facility must coordinate service planning with the resident's other service providers to minimize duplication and maximize coordination.
5. **Service plan.** There must be a written, time-limited, goal-oriented, individual service plan for each resident. The resident's service plan must be based on needs identified during the comprehensive assessment process. The service plan includes, but is not limited to, the following:
 - a. Identification of the services and treatment to be provided to meet the resident's needs;
 - b. Measurable long-term goals and specific short-term goals and objectives for the resident and the resident's family including but not limited to strategies for developing positive family relationships and permanency planning for the resident;
 - c. Means of evaluating progress towards goals and objectives. A description of the specific indicators and timeframes that will be used to monitor and evaluate the resident's progress in achieving the agreed upon goals and objectives;
 - d. Trauma history. Consideration of the resident's trauma history and a determination regarding the most effective means to de-escalate behavior. The resident and the resident's parent or legal guardian may participate in making this determination;
 - e. Development of discharge criteria and projected discharge date and strategies to address anticipated barriers;
 - f. The methods and frequency of services and supports to be provided by the facility;
 - g. Referrals for needed services and supports that are not provided directly by the facility or through independent contractors;
 - h. Identification of persons responsible for implementing or coordinating implementation of the resident's service plan, as well as services provided by other service providers, as applicable;
 - i. A list of needs identified in the assessment process that are not addressed in the service plan and an explanation why the identified needs are not addressed in the services plan;
6. **Signature.** The written service plan must be signed by the program administrator or designee, a representative of the referring agency resident's clinician, the clinical supervisor; the resident, if appropriate; and the resident's legal guardian, if appropriate. The signed, dated service plan must be placed in resident's record.
7. **Resident's copy of service plan.** The facility must document in the resident's record that within five working days after the service planning meeting, the resident and legal guardian received a copy of the written service plan.
8. **Time frame for completion of service plans.** The facility must complete service plans consistent with assessed needs and within time frames outlined in the specialized program

standards. When a service plan is not completed in a timely manner, the reason for the delay must be documented in the resident's record.

9. **Periodic review and update of service plan.** The facility must periodically review and update each resident's service plan.
 - a. Service plans must be reviewed at least every 90 days and updated as needed. The review must evaluate progress toward established goals and the facility must revise the service plan as appropriate.
 - b. The periodic review process is consistent with the process used to develop the initial service plan.
 - c. Appropriateness of continued services for a resident. The facility must assess the appropriateness of continued services for a resident during its periodic review of the resident's service plan and as necessary.
10. **Explanation of service plan.** Unless it is not feasible to do so, the facility must explain the service plan and any subsequent revisions to the resident and the resident's legal guardian in language understandable to them.
11. **Crisis plan.** The facility must develop an initial written crisis plan within 24 hours of admission and an individual plan must be developed within seven days. The crisis plan must include the resident's and family's own words to describe the problems and interventions that may alleviate the crisis, as appropriate. The crisis plan must include:
 - a. A description of possible crisis needs and concrete steps that may be taken by the resident, staff, other organizations, family members, as appropriate and applicable, to prevent or minimize escalation of a crisis;
 - b. Actions that are and are not helpful to the resident; and
 - c. The crisis plan must be reviewed for its effectiveness after each utilization to determine if any updates to the plan are necessary. The review of the crisis plan must be documented.

L. DISCHARGE REQUIREMENTS

1. **Discharge summary.** The discharge process must include involvement of the resident, the resident's legal guardian and others as appropriate. When a resident is discharged, the facility must compile a written summary within 30 days of the date of discharge. The discharge summary must be kept in the resident's record. The discharge summary must include:
 - a. Date of discharge, reason for discharge and the name, telephone number, address of the and relationship of the person to whom the resident was discharged;
 - b. A summary of services provided during care including prescribed medications, a summary of growth and accomplishments during care;
 - c. The assessed needs which remain to be met and alternative service possibilities which might meet those needs; as appropriate; and

- d. Recommendations for an aftercare plan and identification of who is responsible for follow-up services.
2. **Unplanned or emergency discharge.**
- a. The facility must document any unplanned or emergency discharge to describe the circumstances of that discharge.
 - b. When there is an unplanned discharge, the discharge summary must include the circumstances leading to the unplanned discharge, the actions taken by the facility and reasons supporting the facility's discharge of the resident. In cases of emergency discharge, the facility must immediately notify the placement agency or person and must consult with the placement agency or person prior to discharge.
 - c. The facility must work to ensure a safe and appropriate discharge to maintain continuity of care for the resident.
 - d. The facility must provide resident information, including but not limited to, a current medication list, a current crisis plan and the latest treatment plan, that will be sent to the receiving program to ensure continuity of care.

M. HEALTHCARE

- 1. The children's residential care facility's healthcare policy must ensure the availability and provision of a comprehensive program of preventive, routine and emergency medical, mental health, substance abuse treatment and dental care. The facility provides or arranges for health services for residents according to their needs. The facility must assure at least the following:
 - a. Ongoing appraisal of the general health of each resident;
 - b. Comprehensive education and guidance concerning health, personal care and hygiene;
 - c. Maintenance of complete medical records including treatment provided for specific illness and medical emergencies, medical consents and releases, vision and physical and dental exams; a record of each resident's immunization history including documentation of any refusal of immunization by a legal guardian;
 - d. Ongoing relationships with a licensed practitioner, licensed mental health professional, substance abuse treatment professional and dentist to advise the facility concerning medical, mental health and dental care;
 - e. Administration of medication to residents; and
 - f. Receipt of timely competent medical care when the resident is ill and necessary follow-up medical care.
- 2. **Physical and dental examinations.** Residents within a children's residential care facility receive the following examinations and care:

- a. **Physical examination.** Upon admission, the facility must schedule a physical exam by a healthcare professional unless the resident has received a physical examination within the past 12 months and the results of the examination are provided to the facility;
 - i. Residents must receive a complete physical examination every year.
 - b. **Dental examination.** Within 60 days of admission, the facility must schedule a dental exam unless the resident has been examined within six months prior to admission and the results of the examination are provided to the facility.
 - i. The facility must ensure that each resident over three years of age has a dental examination every six months. The facility must make a diligent effort to ensure that a resident receives necessary dental work.
3. **Corrective devices.** The facility must make a diligent effort to ensure that a resident who needs glasses, a hearing aid, a prosthetic device, or other corrective device is provided with the necessary equipment or device.
4. **Refuse medical treatment.** The facility must not require a resident to receive medical treatment when the legal guardian or resident object to such treatment on the grounds that it conflicts with the tenets and practices of a recognized church or religious denomination of which the legal guardian or resident is an adherent.
 - a. If failure to obtain medical treatment causes a threat of serious harm, the facility refers the resident's care to the appropriate medical authorities and Child Protective Services.
5. **Medical director.** A children's residential care facility providing medication management services must have a medical director on staff or under contract. The medical director is responsible for the medical direction and coordination of medical care in the facility, is a liaison with other physicians, participates in any medically related quality assurance activities and reviews and approves the organization's medical policies.
 - a. The duties, responsibilities and availability of the medical director, and the terms of agreement, must be delineated in writing. The agreement must be signed by the physician serving as medical director and by an authorized representative of the licensed facility.
6. **Management of infectious disease policy.** The facility must establish policy for the prevention, control, and investigation of infections which includes:
 - a. A protocol for early identification, reporting, and monitoring of infections;
 - b. A protocol for the prevention of the spread of infection consistent with applicable standards of care;
 - c. Monitoring of staff for infections and prohibits employees with a communicable disease or infected skin lesions from direct contact with residents' food; and
 - d. Each facility must have policies and procedures for containment and disposal of biomedical waste.

7. **Routine and emergency healthcare policy.** The facility must provide routine and emergency healthcare to persons receiving services:
 - a. Emergency medical and mental health or psychiatric services must be accessible 24 hours a day;
 - b. Adequately trained first aid and cardiopulmonary resuscitation (CPR) staff. At least one CPR-trained staff at each residence, 24 hours a day; and
 - c. First aid supplies are adequate to meet situations reasonably anticipated.

N. MEDICATION ADMINISTRATION AND STORAGE

1. **Administration of medication.** The facility must ensure that all persons administering medications will be minimally a certified residential medication aide (CRMA), and use safe and acceptable methods and procedures consistent with recognized standards of practice.
 - a. The facility must assure that staff responsible for medication administration are oriented to the facility's procedures and have access to current information regarding medications being used within the facility, including but not limited to, side effects of medications, contraindications and doses.
 - b. At least one appropriately licensed or certified staff member must be on shift at all times.
2. **Medication.** The facility must ensure that a resident receives only the medications ordered by the resident's authorized licensed practitioner in the correct dose, at the correct time, and by the correct route of administration consistent with acceptable standards of practice.
 - a. Facilities must refill prescriptions to avoid any lapse in the administration of prescribed medication.
 - b. Facilities must obtain legal guardian consent of any initial medications ordered or any medication doses changed.
3. **Licensed medical practitioner's order required.** Facilities must not administer, arrange for or discontinue a medication or treatment without a written order signed and dated by an authorized practitioner licensed to prescribe medications.
 - a. Written orders are in effect for the time specified by the authorized licensed practitioner. In no case may the time specified for a written order exceed 12 months.
 - b. A new written order is required to continue medication beyond a 12-month period.
 - c. Written orders for psychotropic medications must be re-issued every three months, unless otherwise indicated by the authorized licensed practitioner.
 - d. Standing written orders are acceptable when signed and dated by the authorized licensed practitioner.
 - e. An authorized licensed practitioner's order is required for residents to carry medications on their body, such as inhalers and epinephrine auto-injectors.

4. **Injectable medications.** Injectable medication must be administered by staff who are trained to administer injectable medications.
 - a. Epinephrine injections and scheduled insulin for a stable diabetic resident may be administered by a direct access worker who has been trained by a registered professional nurse regarding the safe and proper use of an epinephrine injection and insulin. The direct access worker must have current documentation of successful completion of the injectable medication training included in his/her employee record.
5. **Medication Administration.**
 - a. **Medication record.** The facility must maintain a written medication record for each resident. The resident's medication administration record must, include but is not limited to, the following information:
 - i. The written order for each medication or treatment prescription;
 - ii. There must be evidence of notification of the practitioner for refused medications;
 - iii. Possible adverse side effects of prescribed medication;
 - iv. The type and frequency of monitoring for effects of the medication or treatment; and
 - v. Any stop order signed and dated by the authorized licensed practitioner.
 - b. **Medication errors and reactions; incident reports.** Medication errors and adverse reactions must be reported immediately to the medical provider who prescribed the medication and must be recorded in an incident report in the resident's record and include:
 - i. Medication errors include errors of omission, as well as errors of commission;
 - ii. Errors in documentation or charting are errors of omission; and
 - iii. Documentation of the prescriber's response upon the reporting of medication errors.
 - c. **Medication administration record (MAR) schedule.** The resident's medication administration record schedule must be made available to all staff members responsible for administering medication to the resident. A copy of the medication schedule must be placed in the resident's record. The facility must have a written medication schedule for each resident to whom prescribed medication is administered which must contain:
 - i. Name of resident;
 - ii. Name of prescribing practitioner;
 - iii. Telephone number and other contact information at which prescribing practitioner can be reached in case of medical emergency;
 - iv. Reason for prescribing medication;

- v. Date medication was prescribed;
 - vi. Generic or commercial name of medication;
 - vii. Dosage level, route and time of day when medication is to be administered;
 - viii. Chart showing the date, time, dosage and initials of the individual administering the medication so long as the individuals full signature is written somewhere legibly on the document; and
 - ix. Date prescription will be reviewed.
6. **Medication containers.** Medications must be maintained in their original, properly-labeled packaging and containers.
- a. Medications must be measured, and prepared for administration using appropriate devices and techniques consistent with acceptable healthcare standards of practice for medication administration;
 - b. Personnel must not reuse disposable medicine containers. Re-useable medication measuring and preparation devices must be cleaned and sanitized consistent with manufacturers' guidelines and acceptable healthcare standards of practice.
7. **Storage of medication administered by the facility.** The facility must maintain medications in their original containers in a locked storage cabinet.
- a. The cabinet must be locked when not in use and the key to the cabinet must be carried by the person on duty in charge of medication administration;
 - b. The cabinet must be equipped with separate cubicles, plainly labeled, or with other physical separation for the storage of each resident's medications; and
 - c. The facility must store sample medications in accordance with the facility's policies.
8. **Staff medications.** Staff must secure their own personal medication in a way that makes it inaccessible to residents.
9. **External-use medications and treatments.** The facility must keep medications and treatments administered by the facility that are for external use separate from medication taken internally.
10. **Refrigerated medication.** The facility must keep medications administered by the facility that require refrigeration safely stored in a separate refrigeration unit that is not used to store food.
- a. The refrigerator's temperature must not exceed 41 degrees Fahrenheit;
 - b. A thermometer must be placed in the refrigerator to ensure proper temperature control; and
 - c. The facility must have a procedure for monitoring and recording refrigerator temperatures.

11. **Disposal and destruction of medications.** Organizations must have written policies regarding the disposal and destruction of discontinued, expired or unused medications, including non-controlled and controlled substances. The organization's policies must comply with federal and State law including Drug Enforcement Agency rules and regulations for medications disposal.
12. **Storage of expired and discontinued medications.** Expired and discontinued medication must be taken out of service and locked in a separate cabinet away from other medications until destroyed.
13. **Return medication to pharmacy.** The facility must have a written agreement with the dispensing pharmacy that outlines policies, procedures, and responsibilities for both parties in regard to discontinued and unused medication returns and disposal.
14. **Psychotropic medication.** The facility's written medication policy must govern the use of psychotropic medications. The resident's use of psychotropic medication must be in accordance with the goals and objectives of the resident's service plan.
15. **Legal guardian's consent to medication.** Unless there is a court order to the contrary, the facility must secure written informed consent from the resident's legal guardian prior to administration of the prescribed psychotropic medication at a particular level of dosage.
16. **Resident's consent to medication.** When a resident is 14 years of age or older, the facility must also obtain written informed consent from the resident prior to administration of the prescribed psychotropic medication except when the resident lacks the capacity to provide informed consent.
 - a. **Revocation of consent.** The resident's legal guardian or a resident 14 years of age or older may revoke consent at any time. When consent is revoked the facility must:
 - b. Cease administration of the psychotropic medication immediately;
 - c. Inform the prescribing medical provider;
 - d. Inform the resident's legal guardian if consent is revoked by the resident;
 - e. Immediately document in the resident's record the date and time and the resident's stated reason for revoking consent to psychotropic medication;
 - f. Provide documentation to the resident, the resident's legal guardian and responsible agencies, as applicable, regarding the revocation of consent; and
 - g. If indicated, seek a court order to continue medication.
17. **When prescribing psychotropic medication for a resident.** The medical provider must provide a written report detailing the reasons for prescribing a medication, expected results and potential side effects.
 - a. The facility must obtain a written initial report from the prescribing physician detailing the reasons for prescribing the medication, expected results of the medication and alerting facility staff to potential side effects.

- b. Every 30 days, or as deemed necessary by the prescribing physician, after the date of the initial prescription the medical provider who prescribed the psychotropic medication or another medical provider must submit a written report on the resident who is receiving the medication. The report must be based on actual observation of the resident and review of the daily monitoring reports. The report must detail the reasons the psychotropic medication is being continued, discontinued, increased or decreased in dosage or changed.
 - c. On a daily basis, a staff member trained in the recognition of side effects of the prescribed medication must complete the daily monitoring report. Facility staff must monitor the resident who receives psychotropic medication.
 - d. Psychotropic medication errors and drug reactions must be reported immediately to the medical provider who prescribed the medication, documented in an incident report and kept in the resident's record. The facility must follow-up and document recommendations from the provider.
18. **Refusal of psychotropic medication.** When a resident refuses a psychotropic medication:
- a. The facility must immediately document in the resident's record the date and time, the name of the person attempting to administer the medication and the resident's stated reason for refusal.
 - b. A resident who refuses to take medication three consecutive times must be considered to have revoked consent. When consent is revoked, written documentation, signed by two staff members who personally witnessed refusal, and if possible, by the resident, must be placed in the resident's file.
19. **PRN orders for psychotropic medications.** Written "as needed" (PRN) orders signed and dated by authorized licensed practitioners for psychotropic medications for a resident must include detailed behavior-specific written instructions, including symptoms that might require use of such medication, exact dosage, exact time frames between dosages and the maximum dosage to be given in a 24-hour period.
- a. The facility is prohibited from administering the PRN psychotropic medication, unless the order includes the detailed behavior-specific written instructions.
 - b. The facility must notify the authorized licensed practitioner within 24 hours when a PRN psychotropic medication has been administered, unless otherwise instructed in writing to be notified earlier by the authorized licensed practitioner to notify the licensed practitioner earlier.
 - c. The facility may administer a PRN order for antipsychotic-type psychotropic medications only when the facility also has an order prescribing routine scheduled and administered doses of the antipsychotic-type psychotropic medication for the resident.
 - d. A person qualified to administer medications must be on-site at the facility when a resident is administered psychotropic medications prescribed PRN.

20. **Schedule II controlled substances**

- a. **Schedule II controlled substances.** Facilities that administer Schedule II controlled substances to residents are subject to the following standards:
- i. **Record documentation.** In addition to compliance with federal and State laws, the facility documents and maintains records regarding Schedule II controlled substances in accordance with the following:
 - 1) **Resident record.** The facility maintains a record of the name of the resident, prescription number, the date, drug name, dosage, frequency and method of administration, the signature of the person administering it and verification of the balance on hand;
 - 2) **Daily count record.** The facility maintains a record and signed count of all Schedule II controlled substances at least once a day, if such substances have been used in the facility that day; and
 - 3) **Inventory count record.** The facility counts all Schedule II and controlled substances on hand at least weekly and keeps records of the inventory in a bound book with numbered pages, from which no pages must be removed.
 - ii. **Storage.** The facility stores all Schedule II controlled substances under double lock in a separate locked box or cabinet within the medication cabinet or in an approved double-locked cabinet attached to the wall.
- b. **Diversion control plan.** The facility must maintain a current diversion control plan that contains specific measures to reduce the possibility of diversion of controlled substances from legitimate treatment use, and that assigns specific responsibility to the medical director for carrying out the diversion control measures and functions described in the organization's diversion control plan.
- c. **Resident absence from a facility.** When a resident is expected to be temporarily absent from the facility, the resident's medications must leave the facility with the resident in compliance with the following:
- i. When residents leave the facility for more than 72 hours, the facility must ensure that the resident's medications are in a form that is packaged and labeled by a pharmacist.
 - ii. When residents leave the facility for 72 hours or less, the facility ensures the resident has medications appropriately labeled and packaged to facilitate self-administration(s) of the correct medication by a responsible party.
 - iii. Staff at the facility must convey the following information to the resident or the person responsible for the resident in writing either directly on an envelope containing the appropriate dose or on a separate instruction sheet: the name of the resident and the name and strength of each drug, as well as the directions from the original prescription package and all cautionary information.

- iv. If medication is sent in the original container, facility personnel must count and document the number of pills in the container when it left the facility and the number of pills in the container when the medication is returned to the facility.

O. BEHAVIOR MANAGEMENT

1. **Behavior management.** Individualized, positive behavioral supports must be in place for each resident. Behavior management interventions must comply with Department approved models within the facility's own policy. Administration of behavior management techniques cannot be delegated to persons who are not known to the resident, and cannot be administered by residents, volunteers or inadequately trained staff. Consequences must be connected to the behavior, not excessive and administered as soon as possible after the incident.
2. **Approved passive physical restraint models.** Facilities may only use passive physical restraint models approved by the Department. The facility may only use passive physical restraint when one or more of the following exists:
 - a. The resident is threatening to inflict harm on staff or residents;
 - b. The resident is threatening to inflict harm on self; or
 - c. The resident is causing excessive and continuous damage to property.
3. **Prohibited practices.** The facility must prohibit practices that are cruel, severe, or unusual; subject a resident to verbal abuse, ridicule or humiliation; inflict any type of physical punishment in any manner upon the body; and the administration of psychotropic medications as a means of punishment or discipline.
4. **Seclusion.** The facility must not permit the seclusion of a resident in a locked space. The resident may not be confined alone to any area with the door locked, barred or held shut by staff. Seclusion is prohibited in children's residential care facilities except in children's residential treatment facilities with secure capacity (Level 1 and Level 2), Sections 8(D) and 8(E) of this rule.
5. **Passive Restraints.** The facility must use only passive physical restraint models approved by the Department. Prone restraints are prohibited.
6. **Chemical restraints.** The facility must not use chemical restraints, except in a children's residential treatment facilities with secure capacity (Level 1 and Level 2), Sections 8(D) and 8(E) of this rule. Chemical restraint means the administration of psychotropic medication for the exclusive purpose of sedation of a resident.
7. **Isolation.** Isolation, if utilized, must be in accordance with the following:
 - a. The facility must use isolation only in accordance with the facility's written policies. Isolation must not be used for punitive purposes, convenience of staff or as a method of controlling minor misbehaviors.
 - b. Other less restrictive responses must be considered prior to the use of isolation. These may include, but are not be limited to, verbal discussion, counseling, and voluntary time-out.

- c. Isolation may include facility staff preventing egress by standing in the doorway while engaging in approved de-escalation techniques.
- d. Each incident involving the use of isolation must be documented in the resident's record and must include at least the following:
 - i. An assessment of the precipitating cause or reason for using isolation;
 - ii. Documentation of the length of time isolation was used and documentation of each visual check on the resident;
 - iii. An explanation of any less restrictive intervention tried prior to isolation; or the reason why no less restrictive intervention was considered appropriate and tried;
 - iv. An assessment of the benefit of isolation relative to treatment goals established for the resident; and
 - v. Name(s) of the authorizing staff person(s) and staff involved.
- e. The use of "self-time-out" is not considered isolation if the resident voluntarily separates him or herself from the milieu to go to a quiet, non-stressful area. Appropriate staff supervision is required.
- f. Each use of isolation must be approved and monitored by supervisory staff or designee.
- g. Any use of isolation exceeding 30 minutes in duration must be approved by the administrator and approval is required every two hours thereafter. The approval must be documented and reviewed by the facility for each incident of isolation.
- h. Isolation exceeding 30 minutes in duration must be visually monitored at intervals appropriate to the resident's needs but must not exceed 15-minute intervals.

P. PHYSICAL PLANT

1. **General condition of the facility and premises.** The facility must maintain all structures and the grounds of the facility in good repair and free from danger to health or safety. Immediate steps must be taken to correct any condition in the physical facility or on the premises that poses a danger to a resident's life, health or safety.
 - a. Areas deemed by the licensing authority to be unsafe such as, steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads, must be fenced off or have natural barriers to protect residents.
 - b. Playground equipment must be located, installed and maintained to ensure the safety of residents.
 - c. Facilities are prohibited from having rented apartments, rooms or space for persons other than residents in the licensed facility.

2. **Local laws and codes.** All building sites must be accessible for the population intended to be served, and in compliance with all applicable State and federal requirements. The facility must maintain documentation from the appropriate municipal official indicating compliance with all local laws or codes relative to the type of facility for which it is licensed. This requirement is necessary upon initial licensure and whenever a change occurs, such as (but not limited to) the following: building renovations, remodeling, repair or new construction must be in compliance with applicable federal, State and local law including Life Safety requirements designated by the State Fire Marshal's Office.
3. **Building lease.** The lease for any building or buildings not owned by the organization that are used in connection with the provision of resident services must clearly define which party to the agreement is responsible for the maintenance and upkeep of the property. The Department must be notified at least 72 hours in advance of any changes in the lease that may impact responsibilities for maintenance and upkeep, and compliance with this rule.
4. **Building security.** The organization must have written policies and procedures to protect the safety of its residents, staff and confidential information for each building/site used in the provision of services under its license.
5. **Porches, elevated walkways and elevated areas.** The facility must have barriers to prevent falls from porches, elevated walkways and elevated areas.
6. **Roads/driveways.** Roads and driveways must be regularly maintained and passable at all times of the year.
7. **Lead.** Children's residential care facilities are considered dwellings under Maine's Lead Poisoning Control Act. If lead hazards are identified, or a lead-poisoned resident is identified, then the facility must be inspected for lead hazards, in accordance with the Lead Poisoning Control Act. If, during the course of the inspection, lead hazards are confirmed on the facility premises, then the facility is required to abate those lead hazards, in accordance with the Lead Poisoning Control Act and the Rules Relating to the Lead Poisoning Control Act. (See 22 M.R.S. Ch. 252 and 10-144 C.M.R. Ch. 252).
8. **Water supply and temperature.** Facilities must have an adequate, safe and sanitary water supply. Water temperatures in resident areas must not exceed 120° Fahrenheit. There must be an adequate supply of hot water to meet the needs of the facility.
 - a. Prior to initial operation and annually thereafter, a facility that obtains its water supply from any source other than an approved public water system must submit to the Department a written satisfactory water analysis report completed by a Maine-certified laboratory.
 - b. **Initial testing requirement for facilities serving water from a municipal public water source.** In order to hold a license, applicants serving water from a municipal public water system, must collect one first-draw lead sample prior to receiving a license. The sample container must be from a Maine-certified laboratory and consist of a one-liter capacity.
 - c. **Initial testing requirements for facilities serving water from their own well.** A facility serving drinking water from their own well must demonstrate satisfactory water quality by testing for the following contaminants by a Maine-certified laboratory:

- i. Fluoride;
 - ii. Uranium;
 - iii. Arsenic;
 - iv. Lead (first-draw sample);
 - v. Total coliform bacteria; and
 - vi. Nitrates.
- d. **Ongoing annual water tests for facilities with wells.** A facility serving water from its own well must test the water annually for coliform bacteria and nitrates. Samples must be analyzed and results reported by a Maine-certified laboratory. Facilities must maintain water quality reports for Department inspection.
- e. **Public drinking water system.** If a facility serves water from its own source (well) to 25 or more people per day, or have 15 or more service connections, and operate for 60 or more days per year, the facility is a public water system and subject requirements in 22 M.R.S. Ch. 601 and 10-144 C.M.R. Ch. 231.
- f. **Lead testing.** Regardless of the water source, every five years, the facility must conduct a first-draw lead sample test.
9. **Plumbing and sewage disposal.** The facility must ensure that all plumbing and sewage disposal is compliant with all local, State, and federal codes and requirements.
10. **Heating systems.** Facilities must have a central heating plant that can maintain a safe and comfortable ambient temperature between 65° - 75° F.
- a. **Annual inspection.** Heating systems other than electric heating systems must be inspected annually by a qualified technician who is certified to work on the system. The facility must have written evidence that the heating system passed the inspection.
11. **Lighting.** Exterior areas must have sufficient lighting to ensure the safety of residents and staff. Rooms, corridors and stairways within the facility must be sufficiently illuminated. Corridors and stairways within a facility's sleeping area must be illuminated during the night or when activated by a motion detector. Open flame lighting is prohibited.
- a. All electrical equipment wiring, switches, sockets and outlets must be maintained in good order and safe condition.
12. **Doors and windows.** Facilities must have doors on all bedrooms and bathrooms that can be readily opened from both sides. Doors on closets may be removed for programmatic reasons. Windows and window covers must be kept clean and in good repair and must ensure the safety and privacy of residents.
13. **Insect and rodent control.** There must be an effective pest control program so that the facility is free of pests and rodents.

14. **Locked storage of poisonous, toxic or flammable materials.** Poisonous, toxic, flammable and other dangerous materials must be stored ,when not in use, in locked compartments used for no other purpose. They must not be stored with household cleaning solutions or other non-food supplies. They must be stored in a location that is separate from food storage and preparation areas, clean equipment and utensil storage rooms and medication storage areas.
15. **Limited access areas.** Residents must be restricted from unsupervised access to areas not used as living space, unless in programmatic use.
16. **Kitchen and dining areas.** Kitchens used for meal preparation must be equipped with the necessary items for the preparation, storage, serving and clean-up of all meals.
 - a. All kitchen equipment must be maintained in working order and kept in sanitary condition.
 - b. Disposable dinnerware must not be used on a regular basis unless the facility documents that such dinnerware is necessary to protect the health or safety of residents in care.
 - c. Dining areas must be provided which permit residents, staff and guests to eat together.
 - d. Potentially dangerous kitchen utensils must be stored in locked areas when programmatically necessary to ensure safety of residents and staff.
17. **Living rooms.** Each living unit of a facility must contain a space for the informal use of residents and constructed and equipped in a manner consistent with the programmatic goals of the facility.
 - a. Interior spaces for a variety of recreational activities must be provided.
18. **Resident living area.** Resident living areas must be cleaned regularly, well maintained and kept in good repair. Administrative and counseling services must occupy space separate and distinct from resident living areas, and provide for privacy and security of discussions, and records.
19. **Laundry room.** If an onsite laundry room is utilized, it must be maintained in a sanitary manner and kept in good repair. Linen and clothing must be regularly laundered and handled using proper sanitary techniques. Clothes dryers must be vented to the exterior of the building unless designed by the manufacturer to operate without ventilation, and approved for use in this type of facility by the State Fire Marshal's Office.
 - a. Facilities that provide laundry services for resident linens or clothing must collect, transport and store soiled and clean laundry separately.
 - b. Residents must have a means of storing dirty clothes that is not shared with other residents.
20. **Staff quarters.** A facility utilizing live-in staff must provide adequate separate living space for these staff.

21. **Resident bedrooms.** Each resident bedroom must have at least one exterior wall and be of sufficient design to allow for adequate natural light while still ensuring the safety and privacy of the resident.
- a. Each resident bedroom must have direct access to a corridor without passing through a bathroom or another resident's bedroom. No resident room may be used for access to other rooms or corridors.
 - b. After January 1, 2019, no new license may be granted for a facility unless resident bedrooms have 100 square feet of usable floor space per person in a single occupancy bedroom; or 80 square feet of usable floor space per person in multiple occupancy bedrooms. Only floor space that has a ceiling height of at least six feet may be included in the calculation of usable floor space. No more than four residents per room are allowed in a children's residential care facility without written prior approval from the Department.
 - c. **Beds.** Beds and mattresses must be solidly constructed and in good repair. Rollaway beds, metal cots or folding beds are not acceptable.
 - i. Beds must be easily accessible in the bedroom and must not be in a location that is subjected to extremes of heat or cold. No bed may be placed within three feet of a heating unit, unless the unit is properly protected.
 - ii. Beds provided for residents must be proportional to the resident's height and no less than 30 inches wide.
 - d. **Individual bedrooms.** If clinically indicated, a resident must be provided with his/her own individual bedroom.
 - e. **Bedroom furnishings.** Residents must be encouraged and permitted to use their own furnishings and decorations, space permitting. The facility must offer the following furnishings for each bedroom: adequate space to store clothing; a bedside table; and a reading lamp if there is not sufficient overhead and natural lighting.
22. **Bathroom facilities.** The facility must comply with the following applicable provisions:
- a. There must be a minimum of one wash basin, one bath or shower, and one toilet for every six residents in care;
 - b. Adequate toilet facilities must be available for personnel and visitors that are separate from resident toilets;
 - c. Knock-lights and visual alarms must be installed in bathrooms when there is a deaf or hard-of-hearing resident or staff member;
 - d. At least one bathroom that includes, at a minimum, a toilet and hand washing sink must be available on each floor having a resident bedroom;
 - e. Common towels and drinking cups are prohibited, except in a private bathroom in a resident's bedroom;

- f. Facilities must have at least one bathtub and one shower that may be one combined unit. Bathing facilities must provide privacy and safety. Bathing facilities must be maintained in a sanitary condition;
 - g. Bathtubs and showers with slip-proof surfaces;
 - h. Mirrors must be secured to the walls at convenient heights;
 - i. Bathroom facilities must contain other furnishings necessary to meet each resident's basic hygiene needs;
 - j. Bathrooms must be equipped to facilitate maximum self-help by residents and large enough to permit staff assistance of residents, if necessary;
 - k. There must be an adequate supply of toilet paper, hand-cleansing soap and paper towels or an approved hand-drying device available to residents; and
 - l. Bathing facilities must be equipped with grab bars that meet the Americans with Disabilities Act standards.
23. **Towel, linen and bedding supplies.** Facilities must have adequate towel, linen, and bedding supplies. A complete linen change must be available at all times. Bed linens must be changed at least weekly or more often if necessary. Facilities may use water resistant bedding only when necessary.
24. **Power driven equipment.** Power driven equipment, such as lawn mowers, must be maintained in safe and good repair. Safety features must not be disabled, disconnected or removed. Safety features must be used during operation.
25. **Smoking.** No smoking is allowed in any part of the building. Facilities may permit smoking on facility grounds in accordance with rules relating to the Workplace Smoking Act of 1985. A facility may prohibit smoking entirely on its premises, in accordance with 22 M.R.S. § 1580-A (3). Facilities must clearly designate smoking areas with signs.
26. **Firearms prohibited.** Firearms, other weapons and ammunition are prohibited on the grounds or within the building of any structure under the facility's control that is used for the delivery of services.
27. **Swimming pool.** A swimming pool that is made available for resident use must be free from contamination and maintained in accordance with manufacturer guidelines and in accordance with 22 M.R.S. Ch. 602, and the Rules Relating to Public Pools and Spas 10-144 C.M.R. Ch. 202. A swimming pool maintained by the facility is considered a public pool under 22 M.R.S. § 2662 (7) and is subject to licensure by the Department, per 22 M.R.S. § 2492.
28. **Pets.** Pets, except fish in aquariums, are not permitted in common dining areas during meals. No animals are permitted in common food preparation areas. The facility must maintain documented proof of rabies vaccinations for pets. Pets may not present a danger to residents or guests. Facilities must be free of pet odors and must dispose of pet waste regularly.
- a. Service animals are not pets and are not subject to rules governing pets.

29. **Routine maintenance and cleaning.** There must be evidence of routine maintenance and cleaning programs in all areas of the facility.
30. **Equipment.** The facility must replace or repair broken, run-down or defective furnishings and equipment.

SECTION 6. PERSONNEL QUALIFICATIONS AND TRAINING

A. QUALIFICATIONS

1. **Personnel qualifications.** The facility's personnel must be qualified to provide services by education, training, supervisory experience, licensure or the equivalent, consistent with job descriptions and required qualifications to meet the needs of admitted residents.
2. **Verification.** The facility must verify and document the references and credentials of prospective personnel, including education; training; relevant experience; employment and professional recommendations; and State registration, licensing or certification for the respective discipline, if any.
3. **Exercise good judgment.** Residential staff responsible for, or assisting with, the care of residents in the facility and other paid or unpaid staff and volunteers must be emotionally stable and mature, able to exercise good judgment in the supervision of residents, and must not engage in any action or practice that may be detrimental to the welfare of the residents. Staff members must comply with facility policies and procedures.
4. **Background checks.** An individual must not work alone with residents until background checks and orientation training are completed in accordance with Section 6(B) of this rule.
5. **References.** The facility must determine the suitability and capability of prospective staff, in part, by at least three reliable and satisfactory references from persons not related to the applicant.
6. **Job descriptions.** Organizations must have written job descriptions for personnel. Job descriptions must state the qualifications, job expectations, essential position functions, responsibilities, appropriate licensure, and supervisory relationships for each position or group of like positions.
7. **Work description: students and volunteers.** Students and volunteers who have direct contact with residents must have a written work description that includes an explanation of their relationship to the organization, minimum qualifications, essential work functions, responsibilities and supervisory relationships. A signed copy of the work description must be kept in the personnel file.
8. **Information provided to staff, volunteers and students.** The facility must provide copies of the following documents to all staff, volunteers and students having direct contact with the residents in care:
 - a. Description of the organizational structure;
 - b. Personnel policies and practices;
 - c. Job description for each person's own position;
 - d. Communication policy;
 - e. Resident behavior management policies;

- f. Written plans of basic daily routines;
 - g. Volunteer plan to each volunteer having direct contact with the residents in care;
 - h. Student plan provided to each student and the student's school;
 - i. Copies of all job descriptions available to staff, upon request;
 - j. Copy of this rule must be available;
 - k. A written acknowledgement that they have read and understand the policies shall be kept in staff, volunteer and student records.
9. **Supervision of staff.** The facility must assign a supervisor to each staff member based on the staff member's roles and responsibilities.
- a. Supervisors must meet with assigned staff at least weekly and document the supervisory session.
 - b. The facility must ensure that all staff providing therapeutic services must have clinical supervision from appropriately trained, licensed or certified individuals at least weekly.
10. **Staff evaluation.** Within 90 days of date of hire, and annually thereafter, each new direct access worker or administrative staff member must participate in an evaluation of job performance by an assigned supervisor. The performance evaluation must include:
- a. A review of the staff member's strengths and weaknesses;
 - b. Setting time-limited performance goals;
 - c. Devising training objectives to help meet the goals;
 - d. Establishing a strategy that will allow achievement of the goals and objectives;
 - e. The staff member must be provided an opportunity to express in writing any disagreement with their evaluation; and
 - f. Each staff member must be provided with a copy of his or her evaluation.
11. **Medical statement.** The facility must require that each staff member, prior to employment, present a medical statement from a health professional verifying the absence of any communicable disease, including but not limited to, tuberculosis, specific illness, or disability that would render him/her unable to perform the duties of the job in a manner which would not endanger the health or safety of the employee, other staff or the residents in care. Such statement must be based on an examination performed not more than six months prior to employment.
12. **Staff communications.** The facility must establish procedures to assure adequate communication among staff including any external professional services to provide continuity of services to residents in care.

B. BACKGROUND CHECKS

1. **Background check.** The facility must conduct background checks for direct access workers and:
 - a. The facility must conduct background checks for each direct access worker, student or volunteer.
 - b. A comprehensive background check includes the following;
 - i. Maine criminal history information using the State Bureau of Identification System;
 - ii. Maine Child Protective records and out-of-home investigation reports;
 - iii. Sex offender registry reports; and
 - iv. Licensing boards or registry records, if applicable; and
 - c. **Maine Bureau of Motor Vehicles.** Check the driving record of personnel whose job responsibilities are expected, or reasonably anticipated to, include the operation of a motor vehicle. Individuals may not transport the residents for a period of three years after the date of a motor vehicle-related conviction, accident or moving violation for operating under the influence of intoxicants or with an excessive alcohol level.
2. **Frequency of background checks.** The background check must be conducted at least every five years following the initial background check.
3. **Disqualifying offenses.** The facility must not involve any person in the operation, administration, ownership or in the provision of services to residents in care if that person has a history that may endanger residents. Prima facie evidence of such a history, includes but is not limited to, the following offenses:
 - a. Conviction of any crime involving a substantial misrepresentation of any material fact to the public;
 - b. Conviction of any crime which involves a violent act or a threat of a violent act against a person;
 - c. Conviction of any crime constituting a sexual offense;
 - d. History of substantiated child or adult abuse, neglect, or exploitation under the child and adult protection laws of this or any other state;
 - e. If the facility determines that a person identified by the above criteria is rehabilitated and that the residents in care would not be endangered by the person's involvement, documentation of evidence must be placed in the personnel file prior to that person's involvement in any capacity as stated above; and
 - f. The facility shall not engage any person in the operation, administration, ownership or in the provision of services to residents in care if there exists evidence of current substance abuse.

C. PERSONNEL TRAINING

1. **Staff orientation and training.** The organization must ensure that personnel participate in orientation, training and development that provide information necessary to effectively perform their job responsibilities; promote opportunities for learning and skill enhancement; and promote awareness of and sensitivity to the cultural backgrounds and needs of the population served.
2. **Orientation training requirements.** All personnel, volunteers and students, who have direct contact with residents in care must be oriented and trained in at least the following areas:
 - a. The facility's organization, program goals, program standard operating procedures,
 - b. Passive physical restraint techniques, if used;
 - c. Emergency, safety procedures;
 - d. The principles and practices of hygiene for the control of infectious diseases;
 - e. Job specific duties;
 - f. Crisis intervention;
 - g. Recognition of symptoms of suicide;
 - h. Child abuse policies and procedures;
 - i. Policies and procedures regarding confidentiality; and
 - j. Licensing rules pertinent to daily operation of the children's residential care facility.
3. **Six-month training requirements.**
 - a. The facility's emergency and safety procedures.
4. **Annual training requirements.** During each full year of employment direct access workers must receive in-service or external training in at least the following areas:
 - a. The principles and practices of hygiene for the control of infectious diseases;
 - b. The principles and practices of child care and child development;
 - c. Case management, including documentation;
 - d. The facility's administrative procedures and overall program goals;
 - e. Behavior management and conflict resolution techniques,
 - f. The facility's policy regarding the use of passive physical restraint and isolation;
 - g. Effective crisis intervention techniques

- h. Recognition of symptoms of suicide;
 - i. Psychotropic medications;
 - j. Medication administration, as applicable;
 - k. Child abuse and neglect policies and procedures;
 - l. First aid instructions; and
 - m. Licensing rules pertinent to daily operation of the children's residential care facility.
5. **Bi-annual training requirements.** At least one direct access worker must have a valid, current infant, child and adult CPR and first aid certificate per shift per residential building.
 6. **Training record.** A record of orientation and training must be maintained for each staff member, student or volunteer. The training record must include the date, title, and name of trainer. A description of training content must be available for review by the Department.

D. DISTANT SITE PRACTITIONERS

1. Distant site practitioners may not be exclusively used and must be clinically indicated.
2. **Teleservices and distant site practitioners.** Consistent with the facility's written policies, select program services, or components of services may be provided through an interactive telecommunication system (teleservices) between the originating site (where the resident is physically located at the time the service is provided) and the distant site (where the clinician delivering the services is located at the time the service is provided) in compliance with the following standards. Family counseling is the only permissible teleservice for children's residential treatment facilities with secure capacity.
3. **Interactive telecommunication system.** The interactive telecommunications system (teleservice) involves multimedia communication equipment that permits, at a minimum, two-way, real-time interactive communication between the resident and the distant site practitioner. This service is not allowable for children's residential treatment facilities with secure capacity.
4. **Permitted services.** Teleservices may include outpatient services, professional consultation, psychiatric diagnostic interview examinations, individual psychotherapy, counseling, pharmacological management, a neurobehavioral status exam and examinations or evaluations of the resident are under the control of the practitioner at the distant site. This is not permissible for children's residential treatment facilities with secure capacity. Family counseling is the only allowable teleservice for children's residential treatment facilities with secure capacity.
5. **Qualified distant site practitioners.** The practitioner at the distant site must be a physician, a physician's assistant, a nurse practitioner, a clinical nurse specialist, a clinical psychologist, a licensed clinical social worker, a registered dietitian or nutritional specialist, a licensed alcohol and drug counselor, a certified alcohol and drug counselor, a licensed clinical professional counselor or a licensed marriage and family therapist. This service is not permissible for children's residential treatment facilities with secure capacity.

- a. The distant site practitioner must be qualified to provide the teleservice, by education, training, licensure or the equivalent, consistent with the credentials required for the specific service to be provided.
- b. The facility must confirm that the distant site practitioner is licensed in Maine, or that the provider is approved to provide telemedicine services within Maine, consistent with the appropriate Maine provider licensure board (Board of Licensure in Medicine, Board of Licensure in Osteopathic Medicine, Board of Nurses, etc.).
- c. The facility must secure and pay for a background check on the distant site practitioner to confirm that the practitioner is licensed to practice in the state where the practitioner is located.
- d. When a distant site practitioner is an employee of a licensed entity, the facility may comply with the above by securing a signed and dated Department-approved attestation from the employer of the distant site practitioner. The attestation must state that the employer has had a background check secured within the past 12 months on the distant site practitioner.
- e. The facility must confirm that the distant site practitioner is an employee in good standing of the licensed employer.
- f. The facility must conduct reviews of the distant site practitioner's performance at least annually.

E. INDEPENDENT CONTRACTORS

1. **Independent contractor.** Organizations must ensure that services provided through a written agreement with the independent contractor comply with this rule and applicable statutes.
2. **Written agreement.** Organizations must use a written agreement that governs the relationship between the organization and the independent contractor.
 - a. **Prior to implementation of the written agreement.** The organization must have documentation to show that it reviewed and determined that the prospective independent contractor has sufficient human and financial resources to fulfill the terms of the contract; the prospective independent contractor is licensed or otherwise legally authorized and credentialed to provide the contracted services; and the organization has sufficient employees to provide contractual oversight of services delivered by independent contractors.
3. **Obligations of the independent contractor.** The written agreement includes at least the following independent contractor obligations:
 - a. The role and responsibility of the independent contractor;
 - b. Clearly defined services that will be delivered by the independent contractor;
 - c. Statement attesting to compliance with core standards and applicable program specific standards outlined in this rule;

- d. Requirement to post a sign at the contractor's site, visible to the public, identifying the relationship between independent contractor and organization;
 - e. Requirement to display the organization's license at the independent contractor's place of business where it is visible to residents and the public;
 - f. Return of the original resident record by the independent contractor to the organization when a resident's case is closed or the contract with the independent contractor ends; and
 - g. Records must be made available to the Department, upon request.
4. **Obligations of the organization.** The written agreement includes at least the following organization obligations:
- a. The role and responsibility of the organization;
 - b. The title of the position in the organization responsible for oversight of the independent contractor;
 - c. The requirement to include the independent contractor in the organization's quality improvement plan;
 - d. To ensure compliance with the terms of the agreement, the organization must maintain a written record of regularly scheduled substantive training, contractual oversight and supervision or consultation sessions for each independent contractor; and
 - e. The organization must provide the amount of clinical supervision or consultation required by the independent contractor's professional licensing authority.
5. **Right of entry and inspection.** The Department has the right to enter an independent contractor's business location where the services are delivered, and review and inspect records for compliance or to investigate complaints at any time, consistent within the usual hours of operation.
6. **Quality improvement review.** Organizations must monitor and conduct quality improvement reviews of services provided by independent contractors. The organization, in conjunction with the independent contractor, develops a written quality improvement plan that includes measurable actions, data collection and timelines to achieve compliance with the provisions of the independent contract agreement.

SECTION 7. DAILY OPERATIONS

The facility's daily routines must not conflict with implementation of the resident's service plan.

A. SUPERVISION OF RESIDENT

The facility must ensure adequate, developmentally-appropriate supervision of residents by facility staff including knowledge of the location of each resident at all times and, as appropriate, proximity to the resident in order to provide prompt intervention as needed.

1. Staff: resident ratios. The facility shall retain a sufficient number of qualified employees and shall delegate to them sufficient authority to accomplish the following:
 - a. Appropriate staff coverage must be in place at all times based on the following factors:
 - i. The age, capabilities, functioning levels, and program plans of the residents in care;
 - ii. The time of day and the size and nature of the facility; and
 - iii. The behavioral acuity of the residents in care.

B. GROUP LIVING ARRANGEMENTS

The facility must adopt a written policy regarding the factors considered when integrating a resident into the facility. The group living arrangement policy must address at least the following:

1. Demonstration that arranging residents into such groups effectively addresses the needs of the residents;
2. Reflect the need of all residents for privacy and description of places residents may use for periods of quiet and privacy;
3. How residents have an opportunity to build relationships within these groupings;
4. Patterns of staff assignment for supervision of the groups;
5. How residents are involved in decision making regarding the roles and routines of their living groups; and
6. There must not be any more than a five-year age difference between residents. The Department may grant exceptions when clinically indicated.

C. RESIDENT'S MONEY

1. Money earned, received as a gift or allowance by a resident is the resident's personal property.

2. The facility may place limitations on the amount of money a resident may possess or have unencumbered access to, when such limitations are considered to be in the resident's best interests and are included in the resident's service plan.
3. The facility may deduct reasonable sums from a resident's allowance as restitution for damages done by the resident, if a restitution plan is included in the resident's service plan. The amount of the restitution must be negotiated with the resident and the resident's legal guardian, based on the resident's ability to pay.
4. The facility must maintain a separate accounting system for each resident's money.

D. CLOTHING

The facility must ensure that each resident has adequate, well-fitting and season-appropriate clothing as required for health, comfort and physical well-being and appropriate to age and resident needs, in accordance with the following:

1. When uniforms are required, the organization must advise the resident and the resident's parent or legal guardian prior to admission;
2. A resident's clothing is properly identified as belonging to the resident and may not be shared in common;
3. Resident's clothing must be kept clean and in good repair;
4. Residents are involved in the care and maintenance of their clothing, as appropriate;
5. Laundering, ironing and sewing services must be available and as appropriate, accessible to residents; and
6. All of the resident's personal clothing goes with the resident at the time of formal discharge.

E. RELIGION

The facility must identify its religious orientation, if any, along with particular religious practices that are observed, and facility restrictions, based on religion. When feasible, residents may attend religious activities and services of their choosing in the community, and when necessary, the facility arranges such transportation.

F. AUTHORIZED ABSENCES

When a resident makes an overnight visit outside the facility, the facility records the date the resident leaves the residence; the resident's location; the duration of the visit; the name, address, phone number and other contact information of the person responsible for the resident while absent from the facility; and the date and time of the resident's return.

G. UNAUTHORIZED ABSENCES

Within a reasonable period, the facility must notify the resident's legal guardian, the placing agency, and the appropriate law enforcement official in the event of unauthorized absence of a resident.

H. FOOD SERVICE AND SAFETY

Food must be prepared and served in a safe manner and in accordance with applicable standards.

1. **Adequate diet.** Residential facilities must offer a nourishing, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.
 - a. No resident is to be denied a meal for any reason, except per a doctor's order.
 - b. No resident is to be force fed or otherwise coerced to eat against his/her will, except per a doctor's order.
 - c. The facility must ensure that, at all meals served at the facility, staff eats substantially the same food served to residents in care, unless age differences or special dietary requirements dictate differences in diet.
 - d. The facility must make provisions for residents with special dietary needs.
2. **Planned menus.** Facilities must have a menu plan that varies the food served daily, in accordance with resident needs and preferences. Substitutions must be documented. The menu must offer a variety of foods, including fresh fruits and vegetables and be made available to the Department, upon request.
3. **Meals and snacks.** Residents must be offered at least three meals in a 24-hour period. Additional food and beverages must be available 24 hours per day. Residents may choose whether to eat the offered meals unless otherwise directed by a physician.
4. **Resident-owned food.** Nothing in this rule prohibits a resident from accepting and consuming gifts of home canned goods and other foods from family members or others. The facility must ensure that these items are appropriately labeled and dated.
5. **Milk and milk products.** Only pasteurized milk and milk products may be used. No reconstituted powdered milk or evaporated milk may be served to drink. Powdered milk or evaporated milk may be used for cooking. Milk served for drinking must be served in the original container or poured directly from the original container into the resident's glass at mealtime.
6. **Perishable food.** Perishable food must be stored in sealed, labeled and dated containers at temperatures that protect against spoilage.

I. TRANSPORTATION

The facility must provide for the transportation necessary for implementing the resident's service plan.

1. **Emergency Transportation.** The facility must have means of transporting residents in cases of emergency.
2. **Supervision.** The facility must provide for adequate supervision in any vehicle used to transport residents.
3. **Residents with disabilities.** The operator of any vehicle transporting residents must be informed of any need or problem of a resident which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness or a disability. The facility will provide for the accessibility of appropriate transportation for residents with disabilities.
4. **Vehicle requirements.** All vehicles used for the transportation of residents must be in a safe condition in conformity with all applicable motor vehicle laws and equipped in a fashion appropriate for the season.
5. **License requirements.** Any person authorized by the facility to transport residents must be properly licensed to operate that class of vehicle. The number of persons in any vehicle must not exceed the number of available seats in the vehicle.
6. **Smoking is prohibited** in any vehicle that transports residents. (See 22 M.R.S. § 1549).

J. EMERGENCY PREPAREDNESS

1. **Disaster, hazard and evacuation plans.** The organization must have a written disaster, hazard and evacuation plan for each facility. The disaster, hazard and evacuation plan must be based on a facility's all-hazards risk and hazard vulnerability assessment, must assign specific tasks and responsibilities to personnel and must be developed with the assistance of qualified fire, health and safety agencies. At a minimum, the plan must address the following:
 - a. Natural disasters and man-made disasters, or other serious events;
 - b. Security of medication and records;
 - c. Safety of residents and staff, including an evacuation plan and shelter in place plan;
 - d. Notification plan for staff and residents;
 - e. How medication will be dispensed in the case of an emergency;
 - f. Training personnel and residents to report fires and other emergencies in accordance with written emergency procedures;
 - g. Training residents and personnel to evacuate the building including specialized training as necessary for the evacuation of residents and persons with disabilities;

- conditions that may impair their ability to evacuate or their ability to understand the nature or purpose of the evacuation;
- h. Training personnel on all shifts to perform assigned tasks during emergencies, including the use and location of emergency equipment;
 - i. Accounting for the whereabouts of personnel and service recipients;
 - j. Coordination with emergency responders;
 - k. Plans for notifying the Department that residents have been evacuated from a facility for any reason other than a timed drill, after residents are safely evacuated; and
 - l. Plans for notifying the State Fire Marshal's Office immediately after residents are safely evacuated.
2. **Continuity of operation plan.** The organization must have an appropriate plan for site and program for the continuity of operation in the event of an emergency including:
 - a. Plans for ensuring sufficient personnel and alerting a roster of volunteers to respond in the event of an emergency;
 - b. Plans for the management of ensuing medical and psychiatric emergencies;
 - c. Plans for the management of medical records and medication;
 - d. Options for relocating residents, to include transfer and continuity of care agreements; and
 - e. Plans for notifying legal guardians, placement agencies, State Fire Marshal's Office, the Department and others.
 3. **Fire safety.** Facilities must comply with all applicable life safety codes and safety requirements including fire drills, smoke and carbon monoxide detector use, placement, and maintenance.
 4. **Fire Marshal's inspection.** Prior to initial operation, and prior to re-licensure thereafter, facilities must secure written documentation of compliance with the life safety code after an inspection by the State Fire Marshal's Office or designee to ensure compliance with appropriate State and local regulations.
 5. **Timed evacuation drills.** The facility must conduct monthly, timed evacuation drills which must include actual evacuation of residents to safe areas.
 6. **Fire drill record.** A record of such emergency drills must be maintained, noting dates and time, evacuation time and exits used, and participants.
 - a. All persons in the building must participate in emergency drills.
 - b. Emergency drills must be held at unexpected times and under varying conditions to simulate the possible conditions in case of fire or other disasters.

- c. Provisions must be made for the evacuation of residents with disabilities.
- 7. **Risk management.** The facility must maintain an active risk management program including investigation of all accidents and recommendations for prevention.
- 8. **Posted information.** The facility must conspicuously post emergency numbers in a place visible to persons using the telephone, including telephone numbers for fire, police, physicians, poison control, health agency and ambulance. Evacuation procedures must be posted in conspicuous locations throughout buildings.
- 9. **Exits.** The facility must assure that every required exit is free of all obstruction or impediments for immediate use in the case of fire or other emergency.

SECTION 8. SPECIALIZED PROGRAMS

Facilities providing the following specialized services must comply with this rule in addition to the specific standards set forth in applicable parts of this section.

A. MENTAL HEALTH TREATMENT PROGRAM

A children's residential care facility licensed to directly provide a mental health treatment program must comply with the following provisions:

1. **Service plan.** Within 72 hours of the resident's admission, the facility with a licensed mental health treatment program must complete the initial written service plan.
2. **Review service plan.** Within 30 days of admission, the facility must complete the individualized comprehensive written service plan. Every 90 days or sooner if clinically indicated, the facility must minimally review and update the service plan. Service plan reviews must include a summary of progress.
3. **Progress notes.** The facility must require at least one progress note per shift in each resident's record, written and signed by a staff member that includes the resident's progress toward service plan goals.
4. **Risks and benefits of treatment.** The service plan must have a statement explaining the risks and benefits of treatment.
5. **Personnel.** The facility's mental health treatment program must comply with the following personnel provisions and the provisions must be included in the facility's personnel policy:
 - a. **Staff training.** The facility must train staff regarding developmental, emotional and behavioral mental health issues that are developmentally appropriate to the residents in care;
 - b. **Clinical supervisor.** The facility must maintain documentation that the clinical supervisor is a board-certified psychiatrist or holds a current Maine license as a clinical social worker, licensed clinical professional counselor or a clinical psychologist and must have training in supervision and the credentials to provide supervision. Duties include:
 - i. Providing clinical supervision during the development and implementation of a resident's service plan and its periodic review;
 - ii. At least every six months, the clinical supervisor must evaluate the facility's clinical services. The review must include a determination as to whether the treatment provided to each resident has been adequate and effective, in conjunction with relevant professional standards. The findings must be addressed during the clinical supervision of staff providing mental health services and during the facility's annual program evaluation;
 - iii. Supervising the implementation of service plans in the facility;

- iv. Be available, or ensure the availability of, an appropriate clinician for emergency consultation and intervention;
 - v. Supervising clinicians, staff and independent contractors, as applicable, who provide clinical services;
 - vi. Reviewing case records and progress notes;
 - vii. Reviewing the adequacy and completeness of screenings, assessments and referrals; and
 - viii. Reviewing and signs service plans as the supervisee's certification or license requires.
6. **Clinical supervision.** Clinical supervision must provide direct access staff providing mental health services with no fewer than four hours per month individually or by group, or as required by the specific staff's professional licensure or certification, whichever is greater.
- a. Staff providing fewer than 20 hours of direct service per week must receive prorated clinical supervision, scheduled weekly or otherwise, that equals at least two hours of clinical supervision every month.
 - b. Documentation of clinical supervision must be signed and dated by the clinical supervisor. The record of clinical supervision must include the date of supervision, name of direct access staff and the duration and content of supervision.
7. **Clinical supervision of students.** Students accepted for field placements are under the direct supervision of a clinical supervisor, or another professional when clinical supervision is not required. The clinician or other professional supervisor accepts responsibility for supervising the direct services provided by the student. The facility must adopt a written plan for the use of students, which must include:
- a. A description of the purpose of students' involvement with the facility and the students' roles and responsibilities;
 - b. A description of required qualifications, orientation and training procedures;
 - c. The designation of routine supervision provided by an appropriately qualified staff member;
 - d. The designation of a liaison between the facility and the school making placements;
 - e. Character and reference checks comparable to those performed for employment applicants; and
 - f. Documentation of the supervision provided to students which must be, signed and dated by the supervisor. The record of supervision must include the date of supervision, name of student and the duration and content of supervision.

B. SUBSTANCE ABUSE TREATMENT PROGRAM

A children's residential care facility providing substance abuse treatment must be in accordance with applicable core standards and specialized program standards set out in this rule, and applicable statutes.

1. **Substance abuse treatment program.** A children's residential care facility licensed to directly provide a substance abuse treatment program must provide the following services including, but are not limited to, the following:
 - a. Group, individual, and family counseling;
 - b. Planned clinical program activities to stabilize and maintain stabilization of the resident's substance dependence symptoms and to help the resident develop and apply recovery skills;
 - c. Relapse prevention skills to improve interpersonal choices and development of a social network supportive of recovery; and
 - d. Treatment directed toward applying recovery skills, preventing relapse, improving emotional functioning, promoting personal responsibility and reintegrating the resident into the world of work, education and/or family life.
2. **Facility notice to parent or legal guardian.** The facility must notify the resident's parent or legal guardian regarding the resident's admission to the substance abuse treatment program unless the resident is under the direct care of a licensed physician, psychologist, substance abuse counselor or social worker and the resident does not consent to notification of the resident's parent or legal guardian.
3. **Resident's right to withhold consent.** The facility shall adhere to the "Notice to Patients of Federal Confidentiality Requirements" as contained in 42 C.F.R. § 2.22. The Department-approved notice regarding a resident's right to withhold consent to notify parent/legal guardian must be given in writing at the time of admission. The notice must be signed by the resident (and may be signed by the legal guardian if appropriate) and placed in the resident's record.
4. **Personnel.** The facility's personnel policy must include provisions for the delivery of substance abuse treatment by qualified personnel.
5. **Licensed alcohol and drug abuse counselor (LADC).** The facility must employ at least one licensed alcohol drug abuse counselor as an employee of its substance abuse treatment program.
6. **Registered dietitian.** Every 90 days, the substance abuse treatment program must provide for periodic review of meal menus by a registered dietitian to ensure nutritional balance.
7. **Symptoms of drug abuse: training.** Within 60 days of hire and before independently working with residents, the substance abuse treatment program personnel must be trained to recognize symptoms of potential abuse of prescription drugs and the effects of such

abuse. Documentation of such orientation training must be placed in the staff member's direct access workers personnel file.

8. **Denial of admission.** When admission is denied, the substance abuse treatment program must, in conjunction with the placing agency, facilitate referral of the child to alternative community resources for substance abuse.
9. **Assessments.** All residential substance abuse programs provide a comprehensive assessment conducted by qualified personnel and a standardized assessment to determine level of care. Within five days of admission, the program must complete a comprehensive assessment, unless the program has access to a written comprehensive assessment that was completed within 30 days of admission.
10. **Service plan.** The service plan must identify the resident's short and long-term substance abuse treatment goals and include a description of the type and frequency of substance abuse counseling and education provided. The service plan review and updates must be done in accordance with the following schedule:
 - a. The initial service plan must be done within 72 hours of admission and must be reviewed and updated during the course of treatment;
 - b. Every week, residential programs designed to provide services of 30 days' duration or less;
 - c. Every month: residential programs designed to provide services between 31 to 180 days' duration;
 - d. Every three months: residential programs designed to provide services in excess of 180 days' duration;
 - e. The service plan must include at least 10 hours per week of formal substance abuse treatment, including one or more of the following: substance abuse education, group counseling and individual counseling; and
 - f. At least monthly, the facility must review the substance abuse treatment portion of each service plan.
11. **Discharge criteria.** The resident's successful completion of the facility's substance abuse treatment program must be based on the resident attaining appropriate goals that support discharge in the resident's service plan.
 - a. **Aftercare.** Each resident's service plan must include, a written description of aftercare services to be provided by the facility unless alternative arrangements have been made. Such services shall include:
 - i. Provision for monitoring of the child's situation at least every 90 days;
 - ii. Provision for re-entry into the facility or for facilitating placement into another treatment program if necessary; and
 - iii. Provision for continuation of aftercare services for a minimum of one year.

- b. **Refusal of aftercare services.** If aftercare services are refused, the reason(s) for refusal must be documented in the resident's record.

C. EDUCATION PROGRAM

A children's residential care facility licensed to directly provide an education program must comply with the following provisions.

1. **Department of Education rules.** The following rules administered by the Department of Education must be followed:
 - a. 05-071 C.M.R. Ch. 101 Maine Unified Special Education Regulation Birth to Age 20.
 - b. 05-071 C.M.R. Ch. 33 Rule Governing Physical Restraint and Seclusion.
 - c. 05-071 C.M.R. Ch. 250 School Approval for Nontraditional Limited Purpose Schools.
2. **Department of Education statutes.** The facility must comply with Department of Education applicable statutes, 20-A M.R.S. Ch. 301 and Ch. 303.
3. **Health, hygiene, safety and immunization requirements.** When the health, hygiene, safety and immunization requirements in this rule and applicable statutes are more stringent than the Department of Education rules or statutes, the requirements of this rule and applicable statutes must apply.

D. CHILDREN'S RESIDENTIAL TREATMENT FACILITY WITH SECURE CAPACITY (LEVEL 1 FACILITY)

A children's residential care facility licensed as a secure capacity facility (Level 1 Facility) provides an intensive mental health program to a resident whose diagnostic assessment indicates that the persistent pattern of the resident's mental health presents a likely threat of harm to self or others and requires treatment in a locked setting that prevents the resident from leaving the program. In a Level 1 Facility, the treatment of the resident's psychiatric condition requires medical supervision less than seven days per week and 24 hours per day, in a residential setting, and under the direction of a physician. Requirements for a Level 1 Facility include:

1. **On-site school.** A children's residential care facility with secure capacity is required to provide an on-site school that complies with the education laws and rules of the Department of Education.
2. **Mental health treatment program.** A children's residential care facility with secure capacity is required to provide mental health services that comply with the mental health treatment program provisions of this rule in addition to the provisions in this section.
3. **Annual program evaluation.** The facilities annual program evaluation must also include the frequency of use of restraints and isolation.

4. **Personnel.** The secure capacity facility's personnel policy must include provisions for the delivery of services by qualified personnel:
 - a. **Registered nurse.** A licensed secure capacity children's residential care facility must employ at least one full time registered nurse who is supervised by a physician or nurse practitioner, who must be on call 24 hours per day, seven days per week; and
 - b. **Psychiatrist or physician.** A licensed secure capacity children's residential care facility must employ a psychiatrist or physician who must be on call 24 hours each day, seven days per week:
 - i. The psychiatrist or physician must be on-site for consultations as least one day per month; and
 - ii. An evaluation by a physician or psychiatrist measuring physical and mental health for each resident, within one week of the resident's admission.
5. **Medication administration.** Only a physician, licensed practical nurse, registered nurse, or an individual who has completed other medication administration courses approved by the Department may be permitted to administer medication.
6. **Psychotropic medication.** When a resident who is 14 years of age or older refuses prescribed psychotropic medication, the resident must be evaluated by a medical provider within 24 hours to determine whether failure to take the prescribed medication jeopardizes the safety of the resident or others.
7. **Chemical restraint.** A facility with secure capacity shall adopt a written policy governing chemical restraint of a resident. The policy shall prohibit PRN orders for psychotropic medication exclusively for the purpose of sedation. The policy shall require the facility to obtain a physician's order for every administration of a psychotropic medication not regularly prescribed. Each order shall be accompanied by a note to be included in the resident's record detailing the need for psychotropic medication. Only facilities with secure capacity are permitted to use chemical restraints. (See Section 5(O)(6)).
8. **Staffing ratios.** All secure facilities, except for children's residential care facility with secure capacity and psychiatric treatment (Level 2 Facility), must retain a sufficient number of qualified employees in order to maintain the following minimum staff to resident ratios:
 - a. At all times, there must be a minimum of two direct access workers at the facility;
 - b. At least one direct access worker for every two residents during waking hours; and
 - c. At least one awake direct access worker for every six residents during sleeping hours.
9. **Staff training.** All staff must be trained at orientation and annually thereafter on the secure character of the facility, including emergency evacuation plans. Every six months, the facility must review with personnel the following: suicide, crisis intervention, passive physical restraint techniques, mechanical restraints and chemical restraints.

10. **Education plan.** The facility must have a plan for the education of the residents.
11. **Weekly service plan team meetings.** The service plan team must meet weekly to review each resident's progress regarding the goals and objectives identified in the resident's service plan. Revisions must be made as needed.
 - a. During the facility's service plan team meeting, each designated non-facility provider (teacher, etc.) must give an update on the resident's progress regarding the goals and objectives identified in the non-facility provider's service plan for the resident.
 - b. Every 30 days, the service plan team must assess the expected duration of stay in the facility for each resident and must record the estimate in the resident's service plan.
12. **Progress notes.** The facility must require at least one progress note per shift in each resident's record, written and signed by a staff member that includes the resident's progress toward service plan goals.
13. **Communication log.** The facility must maintain an up-to-date log for each resident, noting pertinent information for succeeding shifts.
14. **Security and safety.** The facility must be constructed to provide maximum security and safety for residents and staff members.
 - a. Prior to initial operation, and on an annual basis thereafter, the facility must receive written approval from the State Fire Marshal's Office for all required safety and security devices, including but not limited to sprinkler systems.
 - b. A children's residential facility with secure capacity must remain locked at all times, to ensure the safety and security of residents in care. The facility must inspect locking mechanisms on a regular basis and ensure they are in good working order.

E. CHILDREN'S RESIDENTIAL CARE FACILITY WITH SECURE CAPACITY AND PSYCHIATRIC TREATMENT (LEVEL 2 FACILITY)

1. **A Children's residential care facility with secure capacity and psychiatric treatment (Level 2 Facility),** is a type of children's residential care facility with secure capacity that provides psychiatric and intensive mental health treatment. In a Level 2 Facility, the treatment of the resident's psychiatric condition requires medical supervision seven days per week and 24 hours per day, in a residential setting, and under the direction of a physician. Facilities providing this service must comply with all core licensing standards within this rule, including, but not limited to, Sections 5, 8(A) and 8(D) of this rule. In the event that a standard is more stringent in either this section or another section of this rule, the more stringent standard will apply.
 - a. A Level 2 Facility must receive accreditation from one of the following national accrediting organizations:
 - i. The Joint Commission (TJC);

- ii. Council on Accreditation (COA);
 - iii. Commission on Accreditation of Rehabilitation Facilities (CARF International); or
 - iv. Other Department-approved national accrediting organizations.
 - b. All accreditation reports, with findings and remediation, must be submitted to the Maine Center for Disease Control and Prevention.
2. **Admission.** In addition to the requirements set out in Section 5(I)(3) of this rule, admission to a Level 2 Facility must be based on an active psychiatric condition. Residents who have a diagnosis of intellectual disability, must also have another psychiatric condition, which must be the primary basis of treatment. A Level 2 Facility must also document the following at intake:
- a. Diagnosis;
 - b. Summary of present medical finding;
 - c. Relevant medical, psychiatric, and behavioral history;
 - d. Mental and physical functional capacity; and
 - e. Prognosis, to the extent determinable.
3. **Duration of care.** Services at a Level 2 Facility may continue to be provided, as long as medically necessary, as determined by the service plan. An assessment must be completed every 60 days, to determine the need for continued services within a Level 2 Facility.
4. **Service plan.** In addition to the requirements set out in Section 5(K) of this rule, resident's service plan at a Level 2 Facility must:
- a. Be reviewed every 30 days by the team to:
 - i. Determine that services being provided are required for a Level 2 Facility; and
 - ii. Recommend changes in the plan as indicated by the resident's overall adjustment in a Level 2 Facility.
 - b. Be reviewed by a physician at least every 60 days.
5. **Behavioral and rehabilitative therapies.** A Level 2 Facility must provide the following:
- a. Behavioral and/or rehabilitative therapies, the specific modality to be described in the resident's service plan. Therapy must include at a minimum, the following:
 - i. Individual therapy, at least two hours weekly;
 - ii. Group therapy, at least one hour daily; and

- iii. Family therapy, at least two hours weekly.
6. **Ancillary services.** When medically necessary, a Level 2 Facility must assure the provision of ancillary services to residents, including:
- a. Occupational therapy;
 - b. Physical therapy;
 - c. Speech and hearing;
 - d. Interpreter services; and
 - e. Other medical services to address any existing or newly-diagnosed physical health conditions when medically necessary.
7. **Personnel Qualifications.** In addition to the requirements set out in Section 8(D) of this rule, a Level 2 Facility must have appropriately credentialed staff which includes the following:
- a. **Medical director.** A medical director is responsible for overall program implementation, individualized service planning, interventions, and key decision-making regarding a resident's treatment. The medical director must be either:
 - i. Board-eligible or board-certified psychiatrist; or
 - ii. Licensed clinical psychologist AND a physician licensed to practice medicine or osteopathy, practicing in conjunction with fulfilling the above medical director duties.
 - b. **Facility administrator.** A facility administrator is responsible for business oriented decisions regarding the Level 2 Facility. The facility administrator must have a Bachelor's Degree. Duties include but are not limited to: oversight of day-to-day operations; scheduling; assuring staff training; and maintaining the physical plant.
 - c. **Clinical coordinator.** A clinical coordinator is responsible for the oversight of the implementation of a resident's clinical interventions. The clinical coordinator will provide supervision, training, and clinical support to staff clinician(s). Additionally, the clinical coordinator must be either:
 - i. An LCSW with at least two years of experience in the diagnosis and treatment of children with serious behavioral health conditions (may include experience gained while obtaining clinical licensure status as an LMSW-CC); or
 - ii. A clinical psychologist licensed by the State of Maine.
 - d. **Staff clinician.** A staff clinician is responsible for the implementation of the clinical services offered at a Level 2 Facility. The clinical services include, at minimum, a mixture of individual, group, and family therapy provided at the levels outlined in Section 8(E)(5). A staff clinician may be any of the following:

- i. A fully licensed clinical social worker (LCSW); or
 - ii. A fully licensed clinical professional counselor (LCPC); or
 - iii. A fully licensed marriage and family therapist (LMFT).
 - e. **Nurse.** A nurse is responsible for the support of behavioral health, wellness, and the medical needs of a resident receiving treatment at a Level 2 Facility. There must be a nurse present at the Level 2 Facility 24 hours per day, 365 days per year. The Nurse must be either:
 - i. A psychiatric mental health nurse practitioner; or
 - ii. A registered nurse with at least two years of experience in the treatment of children with serious behavioral health conditions.
 - f. **Nurse support.** Nurse support is responsible for supporting the nurse in duties allowable by the scope of their licensure including the administration of medications as well as assistance with personal care activities. The nurse support must be either:
 - i. Certified nursing assistant-medication aide (C.N.A.-M) listed on the Maine CNA. Registry with no disqualifying annotations and two years of experience as a CNA.-M. responsible for the administration of medications, as well as assistance with personal care activities; or
 - ii. Licensed practical nurse (LPN) with at least two years of experience in the treatment of children with serious behavioral health conditions.
 - g. **Direct support staff.** Direct support staff are responsible for the daily implementation of the program. Direct support staff must be present 24 hours per day, 365 days per year. Direct support staff are critical staff required to implement a resident's individualized programming and maintain safety and must hold a behavioral health professional certificate (BHP), with at least two years of experience working as a BHP with a related population.
8. **Staffing ratios.** All Level 2 Facilities must retain a sufficient number of qualified employees in order to maintain the following minimum staff to resident ratios:
- a. One full-time equivalent (FTE) medical director on-site;
 - b. One FTE facility administrator on-site;
 - c. One FTE clinical coordinator on-site;
 - d. One FTE clinician per five residents;
 - e. One FTE nurse per ten residents awake;
 - f. One FTE nurse per 20 residents asleep;

- g. One FTE nurse support per 20 residents awake;
 - h. Two direct care workers, at a minimum, at the facility at all times;
 - i. One direct care worker for every two residents during waking hours; and
 - j. One awake direct care worker for every four residents during sleeping hours.
9. **Staff training.** In addition to the staff training requirements identified in Section 6(C) of this rule, staff at a Level 2 Facility must also receive training every six months in the following:
- a. Training exercises in which staff members successfully demonstrate in practice the techniques they have learned for managing emergency safety situations; and
 - b. Training in and demonstration of competency in de-escalation and intervention techniques before participating in an emergency safety intervention.
10. **Discharge planning.** In addition to the requirements set out in Section 5(L) of this rule, discharge plans at a Level 2 Facility must include the following:
- a. Inclusion in the service plan and be considered a vital component of the resident's care;
 - b. The resident's natural supports, including family or legal guardian, school personnel, and community providers, must be considered in the development of the discharge plan. The resident's family or legal guardian must be involved in the development of the discharge plan;
 - c. The resident has a minimum of a seven-day supply of needed medication and a written prescription for medication to last through the first outpatient visit in the community with a prescribing provider;
 - d. Prior to discharge, the level 2 Facility must identify a prescribing provider in the community and schedule an outpatient visit. Documentation of the medication plan and arrangements for the outpatient visit must be included in the medical record for the resident; and
 - e. If medication has been prescribed to the resident while at the Level 2 Facility, but has been determined to be no longer medically (therapeutically) necessary upon discharge, the reason the medication is being discontinued must be documented in the resident's medical record.
11. **The use of restraints and seclusion.** Restraint and seclusion may be utilized by the provider and must be done in accordance with the Maine Rights of Recipients of Mental Health Services who are Children in Need of Treatment. Restraints or seclusion may only be employed under the following circumstances:
- a. When the intervention is necessary to protect the resident from causing harm to self or others and to prevent further serious disruption that significantly interferes with others' treatment. Restraint or seclusion must not be utilized solely to address the

comfort, convenience, or anxiety of staff, or as a form of coercion, discipline, or retaliation, and

- b. The intervention is the least restrictive emergency safety intervention necessary to resolve the emergency situation after other methods have been proven ineffective or inappropriate;
- c. The restraint or seclusion is performed in a manner that is safe, proportionate, and appropriate to the severity of behavior, and the resident's chronological and developmental age, size, gender, physical conditions, psychiatric conditions, and personal history;
- d. The restraint or seclusion should not result in harm or injury to the resident and must be used only:
 - i. To ensure the safety of the resident or others during an emergency safety situation; and
 - ii. Until the emergency safety situation has ceased and the resident's safety and the safety of others can be ensured, even if the restraint or seclusion order has not expired.
- e. Restraint (including chemical, physical and mechanical restraints) and seclusion must not be used simultaneously.

12. **Acknowledgment on the use of restraints and seclusion.** Upon admission, the facility must inform the resident and legal guardian on the facility's policy regarding the use of restraint or seclusion during an emergency safety situation that may occur. The facility must also;

- a. Communicate its restraint and seclusion policy in a language that the resident and the legal guardian understand using a translator provided by the facility if necessary.
- b. Obtain acknowledgement in writing from the resident, the resident's legal guardian that he/she has been informed of the facility's seclusion and restraint policy.
- c. Provide a copy of the written acknowledgement of the seclusion and restraint policy to the resident and legal guardian, and maintain a copy of the acknowledgement in the resident's record.
- d. Provide contact information for the Department of Health and Human Services, Office of Child and Family Services, Child Protective Services, at 1-800-452-1999.

13. **Orders for restraint or seclusion.** Orders for restraint or seclusion must be by a physician, physician assistant or other licensed practitioner, permitted by the State of Maine and the facility, to order restraint or seclusion and trained in the use of emergency safety interventions. When the team physician is available, only he or she may order restraint or seclusion. In the event that the provider ordering restraint or seclusion is not the treatment team physician, the ordering provider must consult with the resident's treatment team physician as soon as possible and inform him or her of the emergency

safety situation that required the resident to be restrained or placed in seclusion and document in the resident's record the date and time the team physician was consulted.

- a. The order must not be a written standing order and must include:
 - i. The name of the ordering physician, nurse practitioner or physician assistant permitted to order restraint or seclusion;
 - ii. The date and time the order was obtained; and
 - iii. The emergency intervention ordered, including the authorized length of time for the intervention.
 - iv. For a chemical restraint, the order should include the medication to be used, the dosage and the route of delivery.
- b. Each order for restraint or seclusion must adhere to the following:
 - i. Be limited to no longer than the duration of the emergency safety situation;
 - ii. Under no circumstances exceed four hours for residents ages 18-21; two hours for residents ages 9-17; or one hour for residents up to age nine;
 - iii. Within one hour of the initiation of the emergency safety intervention, the team physician, physician assistant, or nurse practitioner must conduct a face-to-face assessment of the physical and psychological well-being of the resident; and
 - iv. Be signed by the ordering physician, physician assistant or nurse practitioner as soon as possible.
- c. In the event of an emergency safety situation, verbal orders for restraint or seclusion must be received by a registered nurse by the end of the emergency situation, and the physician, physician assistant or nurse practitioner must follow a verbal order with a written and signed order in the resident record.

14. Monitoring of the resident during and immediately following restraint.

- a. Clinical staff trained in the use of restraints must be physically present, continually assessing and monitoring the physical and psychological well-being of the resident and the safe use of restraint throughout the duration of the emergency safety intervention.
- b. If the emergency safety situation continues beyond the time limit of the order for the use of restraint, a registered nurse or other licensed staff, such as a licensed practical nurse, must immediately speak with the ordering physician or other licensed practitioner permitted to order restraint or seclusion to receive further instructions.
- c. A physician or other licensed practitioner trained in the use of emergency safety interventions must evaluate the resident's well-being immediately after the restraint is removed.

15. Monitoring of the resident during and immediately after seclusion.

- a. Clinical staff trained in the use of seclusion must be physically present in or immediately outside seclusion room, continually assessing, monitoring, and evaluating the physical and psychological well-being of the resident in seclusion. Video monitoring does not meet the terms of this requirement. A room used for seclusion must:
 - i. Allow staff full view of the resident in all areas of the room;
 - ii. Be free of potentially hazardous conditions such as unprotected light fixtures and electrical outlets;
- b. If the emergency safety situation continues beyond the time limit of the order for the use of seclusion, a registered nurse or other licensed staff, such as a licensed practical nurse, must immediately speak with the ordering physician or other licensed practitioner permitted to order restraint or seclusion to receive further instructions; and
- c. A physician or other licensed practitioner trained in the use of emergency safety interventions must evaluate the resident's well-being immediately after resident is removed from seclusion.

16. Examination following use of restraint or seclusion.

- a. Within one hour of the initiation of the emergency safety intervention, the agency physician or nurse practitioner must conduct an examination of the physical and psychological well-being of the resident. If the examination is not able to occur within one hour, the reason why must be documented in the resident's record. The examination may be in person, or by phone in consult with a registered nurse. When a telephonic consult occurs, the physician or nurse practitioner must examine the resident in person within the following time constraints:
 - i. Within one hour of when the registered nurse requests an examination, or
 - ii. Within one hour of when information relayed is suggestive of causes leading to physical harm to the resident, or
 - iii. Within one hour if an examination has not yet occurred during the resident's stay, or
 - iv. Within six hours in all other circumstances.
- b. The examination includes but is not limited to:
 - i. The resident's physical and psychological status; and
 - ii. The resident's behavior; and
 - iii. The appropriateness of the intervention measures; and

- iv. Any complications resulting from the intervention.

17. Use of time outs

- a. A resident in time out must never be physically prevented from leaving the time out area;
- b. A time out may take place away from an activity or from other residents, such as in the resident's room (exclusionary) or in the area of activity or other residents (inclusionary);
- c. Staff must monitor the resident while he or she is in time out. The periodicity of monitoring should be based on the provider's assessment of the resident's individual needs.

18. Documentation of restraint and seclusion

- a. Documentation regarding the use of restraint and seclusion must be kept within the resident record; and must be completed by the end of the shift in which the intervention occurs. If the intervention does not end during the shift in which it began, documentation must be completed during the shift in which it ends. Documentation of the restraint or seclusion must include all of the following:
 - i. Each order for restraint or seclusion as required in Section 8(E)(12);
 - ii. The time the emergency safety intervention actually began and ended;
 - iii. The time and results of the assessment as required in section 8(E)(13);
 - iv. The emergency safety situation that required the resident to be restrained or put into seclusion; and
 - v. The outcome of the situation;
 - vi. The name(s) of the staff involved in the emergency safety intervention; and
 - vii. The vital signs of the resident.
- b. If the resident is a minor:
 - i. The facility must notify the legal guardian of the resident who has been restrained or placed in seclusion as soon as possible after the initiation of the restraint or seclusion. Families or legal guardians may not waive this requirement.
 - ii. The facility must document in resident's record that the legal guardian has been notified of the emergency safety situation, including the date and time of notification and the name of the staff providing the notification.

19. Post intervention debriefings

- a. Within 24 hours after the use of restraint or seclusion, staff involved in an emergency safety intervention and the resident must have a face-to-face discussion. This discussion must include all staff involved in the intervention except when the presence of a particular staff person may jeopardize the well-being of the resident. Other staff may participate in the discussion when it is deemed appropriate by the facility. The resident's legal guardian must be given the opportunity to participate in the discussion, unless clinical staff have determined that participation would be detrimental to the resident. The facility must conduct such discussion in a language that is understood by the resident's legal guardian. The discussion must provide both the resident and the staff the opportunity to discuss the circumstances resulting in the use of restraint or seclusion and strategies to be used by the staff, the resident, or others that could prevent the future use of restraint or seclusion.
- b. Within 24 hours after the use of restraint or seclusion, all staff involved (including any clinical staff involved) in the emergency safety intervention, and appropriate supervisory and administrative staff, must conduct a separate debriefing session (to not include the resident) that includes, at a minimum, a review and discussion of:
 - i. The emergency safety situation that required the intervention, including a discussion of the precipitating factors that led up to the intervention;
 - ii. Alternative techniques that might have prevented the use of restraint or seclusion;
 - iii. The procedures, if any, that staff are to implement to prevent any recurrence of the use of restraint or seclusion; and
 - iv. The outcome of the intervention, including any injuries that may have resulted from the use of restraint or seclusion.
- c. Staff must document in the resident's record that both debriefing sessions took place and must include in that documentation the names of staff who were present for the debriefing, names of staff that were excused from the debriefing (and the reason for the non-presence of the staff), and any changes to the resident's treatment plan that result from the debriefings.
- d. Staff involved in the use of restraint and seclusion that results in injury to a resident or staff must meet with supervisory staff and evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.

20. Medical treatment for injuries resulting from use of restraint or seclusion

- a. Staff must immediately obtain medical treatment from qualified medical personnel for a resident injured as a result of use of a restraint or seclusion.
- b. The facility must have affiliations or written transfer agreements in effect with one or more hospitals that reasonably ensure that:

- i. A resident will be transferred from the facility to a hospital and admitted in a timely manner when a transfer is medically necessary for medical care or acute psychiatric care;
 - ii. Medical and other information needed for care of the resident in light of such a transfer will be exchanged between the facility in accordance with state and local medical privacy laws, including any information needed to determine whether the appropriate care can be provided in a less restrictive setting; and
 - iii. Services are available to each resident 24 hours a day, seven days a week.
- c. Staff must document in the resident's record all injuries that occur as a result of the use of restraints or seclusion, including injuries to staff resulting from the intervention.
 - d. Staff involved in the use of restraint or seclusion that results in injury to a resident or staff must meet with supervisory staff and evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.

SECTION 9. COMPLIANCE AND ENFORCEMENT

A. STATEMENT OF DEFICIENCIES

1. **The Department issues a statement of deficiencies (SOD).** The Department issues a SOD when it determines that a violation of this rule or applicable statutes has occurred.
2. **The Department issues a SOD for past noncompliance.** The Department may issue a SOD for past noncompliance found in a complaint investigation in which a facility has already taken steps to correct the deficiencies and does not require a plan of correction.

B. PLAN OF CORRECTION

A facility is required to submit an acceptable plan of correction (POC) within 10 business days of receipt of a SOD. An acceptable POC must contain the following elements:

1. The POC for a specific deficiency should address the processes/systems issue that led to the deficiency and must involve a facility-wide plan to ensure full regulatory compliance throughout the facility/system licensed;
2. The procedure for implementing the POC for the specific deficiency cited, and the anticipated date of completion;
3. The monitoring procedure to ensure that the POC is effective and the specific deficiency cited remains corrected and/or in compliance with the regulatory requirements, along with the timeframe/process for monitoring to ensure continued compliance after the date of completion; and
4. The title of the person responsible for implementing the acceptable POC.

C. ORDER OF CORRECTION

When the Department determines that a facility failed to provide an acceptable POC, or fails to implement its Department-approved POC, the Department may issue a written order of correction to the facility. The Department's written order of correction must notify the facility at least 15 days in advance of the deadline within the order of correction. Alternatively, the Department may take other action in accordance with this rule.

1. **Content of Orders.** Orders of correction must be in writing and must include an identification of the rule violated, reasons for citing the violation, period of time within which the violations must be corrected, notice of the licensee's right to request a hearing, if so desired, and the consequences of failure to meet conditions or failure to request a hearing.
2. Department issuance of orders of correction. Orders of correction will be sent to the administrative officer of the facility, and a copy will be sent to the governing body of the facility.

D. CONDITIONAL LICENSE

If, at the expiration of a full or provisional license, or, during the term of a full license, the facility fails to comply with applicable rules and, in the judgment of the Commissioner or the Commissioner's designee, the best interest of the public would be served, the Department may issue a conditional license.

1. **Voiding a Conditional License.** Failure by the conditional licensee to meet the conditions permit the Department to void the conditional license or refuse to issue a full license. The conditional license will become void when the Department has delivered in hand, or by certified mail, a written notice to the facility. If the facility contact refuses service by hand or certified mail then the Department will deliver the notice of the voided conditional license by sheriff.

E. AMENDMENT OR MODIFICATION OF A LICENSE

The Department may amend or modify a license pursuant to 22 M.R.S. § 7802(1)(C).

1. **Emergency Suspension.** Whenever, upon investigation, conditions are found which, in the opinion of the Department, immediately endanger the health or safety of persons living in or attending a facility, the Department may request the district court for an emergency suspension, pursuant to 4 M.R.S. § 184, Sub-§ 6.
2. **Suspension or Revocation.** Any license issued may be suspended or revoked for violation of applicable law and rules, committing, permitting, aiding or abetting any illegal practices in the operation of the facility or conduct, or practices detrimental to the welfare of persons living in, or attending the facility. When the Department believes that a license should be suspended or revoked, it will file a complaint with the district court, as provided in the Maine Administrative Procedure Act, M.R.S. 5 Chapter 375.

F. REFUSAL TO ISSUE OR RENEW A LICENSE

The Department may refuse to issue or renew a license when it finds any of the following;

1. Misrepresentation, materially incorrect or insufficient information on the application;
2. When the facility does not meet the requirements for issuing a license; or
3. The application lacks evidence that the applicant is able to comply with this rule and applicable statutes.

G. REVOCATION OR SUSPENSION OF A LICENSE

The Department may secure a court order to suspend or revoke a license, in accordance with the following provisions:

1. **Non-emergency suspension or revocation.** The Department may seek to suspend or revoke a license for violation of applicable law and rules; or for committing, permitting, aiding or abetting any illegal practices in the operation of the facility; or for conduct or practices detrimental to the welfare of residents in the facility or receiving services from

the facility by filing a complaint with the district court as provided in the Maine Administrative Procedure Act, 5 M.R.S. Ch. 375.

2. **Emergency suspension or revocation without hearing.** Whenever, upon investigation, the Department finds conditions that, in the opinion of the Department, immediately jeopardize the health or physical safety of residents in a facility or receiving services, and the facility has failed to respond appropriately to the known risk, the Department may revoke, suspend or refuse to renew a license without a hearing for a period not to exceed 30 days, in accordance with the Maine Administrative Procedures Act. 5 M.R.S. Ch. 375.
 3. **Emergency revocation or suspension of license.** Whenever, upon investigation, conditions are found that, in the opinion of the Department, pose an immediate threat to the health, safety or welfare of residents in a facility or receiving services, the Department may file a complaint with the district court requesting an emergency suspension of the facility's license, in accordance with applicable law. 4 M.R.S. § 184(6).
- H. **APPEALS.** Appeals are limited to appeals contending that a decision by the Department misapplies applicable laws, procedures or rules.
1. The appellant must address a request for an administrative hearing in accordance with the instructions provided in any action taken by the Department that is subject to the right of appeal.
 - a. The request shall state the specific issue(s) being appealed.
 - b. The request must be made within 30 days of receipt of notice of an action subject to the right of appeal, in accordance with 22 M.R.S. § 7802.
 - c. The following actions are subject to the right of appeal:
 - i. Issuance of a conditional license;
 - ii. Amendment or modification of a license;
 - iii. Voiding of a conditional license;
 - iv. Refusal to issue or renew a full license; or
 - v. The denial of a waiver request.
 - d. Actions subject to the right to appeal will be stayed until the Department makes a final agency decision, unless the license is suspended under 9(G).
 2. Reapplication following adverse actions. A facility which has been denied a provisional license, issued a conditional license or whose current license has been modified, conditionalized, suspended, revoked, voided or refused for renewal may reapply for licensure when the deficiencies identified by the Department have been corrected.

STATUTORY AUTHORITY

5 M.R.S. §§ 2001-2007(A)
22 M.R.S. §§ 1501-1507
22 M.R.S. §§ 7801-7807
22 M.R.S. §§ 8001-8005
22 M.R.S. §§ 8101-8109
22-A M.R.S. § 205(2)
34-B M.R.S. §§ 1001-1953
34-B M.R.S. §§ 15001-15004

EFFECTIVE DATE:

NEW: 10-144 CMR Ch.36, Licensing of Children's Residential Care Facilities
(date)___ - filing 2018 - ____